



# ***IMPLEMENTING SECURITY SECTOR REFORM***

**SECURITY SECTOR REFORM WORKSHOP**

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## Introduction

CNA and the U.S. Army Peacekeeping and Stability Operations Institute (PKSOI) co-sponsored a one-day Security Sector Reform (SSR) Workshop at CNA in Alexandria, Virginia on 16 October, 2008. The SSR Workshop closely followed the publication of FM 3-07, the new U.S. Army Field Manual on Stability Operations. FM 3-07 includes an entire chapter on SSR, drafted by Army authors in collaboration with key U.S. interagency stakeholders, bilateral partners, and international organizations. The Workshop focused on the Security Sector Reform (SSR) elements of the Field Manual.

Key issues in implementing FM 3-07 were identified prior to the Workshop, and formed the basis for frank discussions that occurred during the day-long event. Four panels examined and developed recommendations for police capacity building, non-state security actors (militias), rule of law, and whole-of-government approaches to SSR. Each panel began with short presentations on the panel issue area by SSR practitioners and prominent academics. These presentations were followed by in-depth discussions among Workshop participants.

The Workshop brought together key Security Sector Reform stakeholders from the U.S. interagency community, from the U.S. military (the Army generating force and fielded forces and the Geographic Combatant Commands), and from key bilateral partners. The panel discussions among these stakeholders identified existing gaps in SSR capacity and capability; explored a “way ahead” for interagency planning and management of a whole of government approach to the SSR component of stability operations; and derived “lessons learned” from past stability operations that can support the more effective implementation of SSR programs and activities.

The following Report begins with an Executive Summary which identifies the major conclusions, recurrent themes, and most critical recommendations that emerged from the Workshop deliberations. The main body of the report lays out the proceedings of each panel in greater detail, and includes papers submitted by Workshop panelists. The Agenda, listing the questions that each panel was asked to address, is included at Annex A and the list of Workshop participants is provided in Annex B.

This report is an interim document, as the title implies. The authors welcome comments on the report from Workshop participants or from other interested parties, which may be submitted to either CNA (Constance Custer, [custer@cna.org](mailto:custer@cna.org)) or PKSOI (Thomas Dempsey, [thomas.dempsey@conus.army.mil](mailto:thomas.dempsey@conus.army.mil)).

The Security Sector Reform Workshop was the first of three workshops intended to explore the implementation of FM 3-07 in a comprehensive and whole-of-government context. Subsequent workshops focused on Governance and Participation (28 October 2008) and Economic Development (12 November 2008).

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## **Executive Summary and Recommendations**

### **By Franklin D. Kramer and Thomas A. Dempsey**

Development of security through security reform requires an appropriate understanding of police, non-state security actors, the rule of law and the judiciary, and outside interveners in the context of a stability and/or counterinsurgency situation. These factors are interrelated, and examination of each in the course of the Workshop led to several broad conclusions about security sector reform (SSR), as well as a robust set of specific recommendations for the U.S. policy community and its partners in SSR implementation. The observations, conclusions, and recommendations detailed in this Executive Summary and throughout the rest of the Report are interim in nature, as the Report title implies. Comments are welcome, and will be reviewed during a broader Governance Conference in the spring of 2009, to be jointly sponsored by CNA, PKSOI and the Association of the United States Army.

SSR stakeholders must revisit the policy goals and objectives of SSR programs. The very ambitious end state of legitimate, effective, and accountable host nation security forces is the right goal. To realize that end state, intermediate goals are required that articulate a transitional process of moving forward over time. These intermediate goals should define what is “good enough” and “fair enough” at various stages in an ongoing SSR process, beginning with a worst case of intervention in non-permissive environments. The intermediate goals must clearly address the appropriate sequencing and prioritization of SSR activities, and must nest within what is sustainable in terms of resourcing over the extended periods required for genuine reform and transformation.

Three themes consistently emerged from the workshop discussions, which are more fully elaborated in the recommendations section below. First, there is a qualitative and functional difference between establishing security in a non-permissive environment and providing justice and law enforcement services in a permissive environment. Establishing security in a non-permissive environment will require effective implementation of military tasks along with other elements of security building such as police and judiciary. In a non-permissive environment, the police function will have to deal with individuals and groups that pose “an imminent security threat” to security forces and to the communities that they are protecting. Establishing security in this context will include, but needs to go beyond, the need for community-based justice and police services, and SSR strategies must recognize that fact. Transitional approaches, which blend military operations with longer-term programs to restore justice services and rebuild police forces, are essential. As part of a transitional approach, disarmament, demobilization, and reintegration (DDR) can provide a bridge from military detention operations to a broader, community-based reconstruction process that addresses justice and police services.

Second, a consistent theme across all the panels was the prevalence of non-state security actors in the non-permissive and semi-permissive environments where SSR is most needed. Collaboration with these non-state actors, who frequently enjoy greater legitimacy than statutory host nation security forces within local communities, can offer significant short-term benefits to intervening forces in stability operations. Such collaboration poses serious risks to the SSR agenda in the longer term, however: non-state security actors tend to undermine host nation authority, and are themselves prone to criminalization, abuse of human rights, and predatory behavior. SSR programs must recognize the presence of non-state security actors in the earliest stages of planning and program design, and determine how those non-state actors will be addressed by the SSR effort.

Third, the U.S. government's—and U.S. partners'—efforts to conduct SSR in the justice and law enforcement areas must improve significantly. This is in part a question of out-of-balance resourcing, with too much going to defense and military activities and not enough to justice and civil law enforcement. This imbalance is exacerbated by a lack of focus at the policy level on the critical role that justice and law enforcement play in stabilization and reconstruction, and also by a lack of institutionalized best practices for capacity building and reform in the justice and law enforcement sector. Efforts to address the policing and law enforcement shortfall must recognize the critical role that rule of law plays in this area, and must determine ways and means to quickly establish rule of law frameworks in transition environments. SSR stakeholders, including U.S. interagency and military players, must address this set of gaps in capacity and capability in order to advance the broader SSR agenda.

The critical role of community policing cannot be overstated in a reconstruction and stabilization context. Provision of effective police services is a crucial element in rebuilding public confidence in the machinery of government, and in facilitating other aspects of stabilization and reconstruction. In semi-permissive (or non-permissive) environments where adequate numbers of military forces are not available, however, the rationale for paramilitary security providers is also strong. In short, where law enforcement confronts high levels of organized violence, there is a need for both a paramilitary security capability, and for community policing. How best to meet both requirements is the challenge.

There is some significant experience suggesting that militarizing host nation police forces at the expense of their community policing mission can undermine their ability to deliver police services at the community level. At the same time, the inability of police in such environments to protect themselves and their communities from violent attack can likewise undercut their law enforcement capabilities. Under these circumstances, successful SSR may require the establishment of a separate stability policing capability, either by the host nation or by external actors, leaving local police forces free to focus on community policing. Security from insurgent or similar types of violence is crucial, as is local law enforcement. They are related but different: both needs must be effectively addressed in order for SSR to succeed.

Establishing an integrated funding system for SSR, and crafting the necessary authorities to support that process, is essential. Current funding processes are characterized by stove-piping and functional specialization, both in the executive branch program design and implementation process and in the Congressional funding process. This fragmentation significantly impedes efforts to develop integrated strategies that address sequencing and prioritizing issues across the full range of SSR activities. An integrated SSR “Supplemental” that permits allocation of funds and implementation of programs without the constraints imposed by current funding and authorities could be an approach that provides SSR planners with the flexibility that they need to craft effective, integrated SSR strategies.

A comprehensive assessment process for the host nation security sector is essential to the design of effective SSR strategies. That assessment process must be developed as an interagency, cross-functional activity. It will require the establishment of a common assessment framework, applied by interagency teams with the necessary skill sets to both observe and evaluate host nation institutions and activities. The (Prototype) Deployable Assessment and Advisory Team (known as (P)DAAT) currently under development by JFCOM could provide a vehicle for this undertaking, providing that it is expanded to include non-military, interagency components. The recently established U.S. Interagency SSR Working Group, operating under the Standing PCC for Economic Development, is also developing an assessment process and supporting mechanism; these two efforts should be combined and adequately resourced.

In undertaking stabilization and reconstruction, the Center for Strategic and International Studies (CSIS) and the Association of the United States Army (AUSA) have offered five “principles of success.” These

principles, developed more fully by Rick Barton in his paper on Rule of Law (see “Panel Four: Expanding the 3D Partnership”), should provide the basis for designing an integrated strategy for SSR activities. The five principles of success suggested by CSIS/AUSA consist of the following: 1) anticipation, understanding of context and analysis; 2) integrated strategies with clear priorities; 3) operational innovation and flexibility; 4) clear measures of progress; and 5) constant communications.

Our conclusions, based on the panel discussions and on further analysis, are that security sector reform will be greatly enhanced by the following understandings and actions for each of the four areas that the Workshop addressed.

### **Recommendations: Strategic and Operational Guidelines**

#### **Police and law enforcement**

1. Policing activities likely will differ in important ways, depending on whether the host nation (or parts of it) presents a permissive or non-permissive environment.

--In a permissive environment, policing should focus on law enforcement, with traditional police techniques critical such as investigation and community policing.

--In a non-permissive environment, policing must be extended to include a paramilitary element, focused on responding to insurgent, terrorist, or other major violent activity.

2. Police capacity building requires an integrated effort to be effective: that effort must encompass individual and collective training of police forces; establishment of effective support (including pay and logistics) for those forces; and the development of host nation senior leaders in the law enforcement sector.

3. Police training is best done by specialized, knowledgeable trainers.

--In a permissive environment, police capacity building should focus on classic police training in law enforcement techniques.

--In a non-permissive environment, if the host nation requires a paramilitary stability police force, then military training will be required for those forces—and the U.S. should seek assistance from bilateral partners who have paramilitary police forces (Italian Carabinieri, French Gendarmerie) in structuring, equipping and training that capability.

4. SSR programs focused on building police capacity must be adequately resourced and sustained over time.

--Police training is manpower intensive—and this is true even when the effort is to “train the trainer”—and programs must provide sufficient technical trainers and police advisors to raise host nation policing capacity to levels required for transition within the projected transition time frame.

--Funding for police capacity building should be adequately planned (estimated in the workshops at \$12 million per 1000 police trained), and adequate funding levels must be established and maintained until requisite host nation capacity is achieved.

6. Police training is not enough. If host nation police are to be effective, they need to be provided appropriate support when inserted into the local environment.



--At a minimum, this support must include adequate enabling logistics and a robust police advisor effort.

--In non-permissive environments, direct military support and operational collaboration between police and military units will be required to enable host nation police operations; military and law enforcement planners should incorporate that requirement into stabilization planning models.

7. In a non-permissive environment, determining whether the police are being targeted is critical in the SSR assessment phase and assessment models should incorporate that as a fundamental task; where police are deliberately targeted by combatant groups, SSR planning must include an appropriate concept of operations for police force protection.

8. Police can be both national and/or local. It is critical to determine what model will be followed, and how it will be established, in the early stages of SSR planning.

--Key questions to be answered in the SSR assessment process should include who hires the police; who directs police operations; and what is the relationship of the police to the national, provincial and local power structures.

--If a national model is being utilized, SSR activities should include capacity building at the ministerial level, and should support the development of relationships between the appropriate host nation ministries and local policing activities.

9. Outside interveners can support, train, and/or direct police activities in a host nation.

--Determining the appropriate role(s) for external actors in host nation policing is critical and should be thoroughly addressed in assessment models.

--Whatever the initial role(s), external involvement in policing will almost certainly change over time: SSR planning should shape that change to support progressively greater host nation autonomy.

--Where external actors and the host nation exercise “shared sovereignty” in directing or controlling police operations, processes for the direction/control of police, including “right-hand seat” guidance, must be jointly developed and implemented.

10. Police effectiveness should be assessed on a regular basis as SSR proceeds, with the most critical measure being the degree to which host nation communities rely on the police as the first responder of choice, rather than militias, external forces, or private security companies.

### **Non-State Security Actors (Militias and Other Groups)**

11. Non-state security actors may be critical groups in providing security at the community level.

--Non-state security actors are distinguished by their capacity for utilizing violence, and so undercut the process of re-establishing the state monopoly on violence, a key objective of SSR; circumstances may nonetheless require working with non-state actors to create security in the early stages of an intervention.

12. On the positive side:

--Militias or other non-state actors can become collaborative partners with intervening forces, extending the reach and effectiveness of those forces.

--Militias and other non-state actors can limit violence in the communities in which they operate.

--Militia and other non-state actors may be more trusted by some elements of the populace than the host nation government and/or host nation security forces.

--Militias and other non-state actors can be “youth hiring “ programs for potential negative actors—but an important question is whether such actors might better be transitioned to a less potentially violent civilian corps focused on the non-security aspects of reconstruction.

13. On the negative side:

--Militias and other non-state actors may lack any accountability mechanisms and may themselves become perpetrators of violence and human rights abuses against civilians.

--Militias and other non-state actors can create or reinforce a culture of impunity.

--Militias and other non-state actors can undercut the authority of the host nation government, undermining efforts to restore legitimate and effective governance.

14. When militia and/or other non-state actors are used to generate security, it is critical to analyze there potential impact on the broader SSR and reconstruction agenda.

--SSR planning must develop ways and means to mitigate the negative aspects of collaboration with non-state actors.

--SSR implementation should transition over time to a stable situation—most generally, where the state will incorporate or otherwise control the militias or non-state actors, restoring the state monopoly on the use of coercive force.

--Transition of an uncontrolled or illicit militia or non-state actor to a controlled or licit group may be an important intervening step in the process of restoring state control.

--Different transition approaches may be required in different parts of the host nation.

15. Where the militias or non-state actors play a role, even if temporary, in re-establishing a secure environment, SSR must address several key issues in their employment.

--Determine who pays non-state security actors, and what levels of compensation will be provided; recognize fully the impact of these decisions on other elements of SSR, such as compensation for state security forces.

--Determine who will advise the non-state security actors, what mandates and authorities those advisors will exercise, and who will direct the advisor effort.

--Establish the relationship between non-state security actors, external forces, and the host nation government, including host nation security forces.

16. As Disarmament, Demobilization, and Reintegration (DDR) programs support transition for militias and non-state actors, it is important not to provide benefits only to those who have been in such groups and, by comparison, to disadvantage “ordinary” citizens.

### **Rule of Law and Judiciary**

17. While intervention for stability operations purposes often means that the rule of law is not operating in the host nation, there almost always will be a host nation rule of law framework or frameworks.

--Identifying host nation rule of law frameworks is an essential task for the SSR assessment process.

--The assessment process must recognize and identify competing frameworks where they exist, and determine the level of legitimacy that each enjoys among local communities.

18. Once the SSR assessment process has identified existing rule of law frameworks, SSR planning must determine which frameworks will be adopted and how they will be applied.

--Rule of law frameworks can be expected to change as transition goes forward and host nation sovereignty is re-established; SSR planning must both reflect and shape that change.

--Input from the host nation will be critical in both the rule of law assessment and in determining what frameworks to employ; the nature of that input will be affected by the status of the host nation and its government, but even where the host nation government is not currently functional, means must be found to support host nation participation in this process.

19. Several critical issues should be addressed with respect to rule of law by both interveners and the host nation.

--Intervening forces must determine the relevance of law other than host nation (occupation law, martial law, UN resolutions, etc.) to their operations.

--Interveners and the host nation government must determine to what extent the concept of shared sovereignty between interveners and host nation will apply, and must establish mechanisms and processes to implement shared sovereignty where required.

--SSR participants must determine how host nation law will apply to SSR programs and program implementers.

--SSR programs should recognize that changes will be made over time in all of these areas, and plan for those changes accordingly.

20. Decisions regarding the host nation rule of law framework will generate critical issues in related areas of governance beyond SSR.

--The rule of law framework adopted may require restoration of or changes to host nation governance structures and processes; in this event, the success of SSR will be tied closely to the implementation of required changes in the political processes of governance.

--The rule of law model adopted may influence the relationship between central government authority and local governance structures (including customary and traditional structures); SSR planners must recognize and understand that influence and determine how it will affect the SSR effort.

21. SSR programs must determine the role that the formal judicial process will play in the host nation criminal justice system, and what other, informal processes will be used, if any.

22. SSR planning must determine how the judicial process will be staffed and otherwise supported.

--In a country with limited judicial resources, outside judges may be required until a host nation judiciary is sufficiently developed.

--In some cases greater usage may be made of at least some aspects of traditional rule of law processes even though those may not conform to standards the interveners themselves hold.

--The necessity of the intervention implies that it may take time to create a fully functional rule of law process: SSR may require interim processes that are “fair enough” in the eyes of the host nation and related to international norms to support transition to a fully functional and legitimate host nation rule of law framework; what is “fair enough” will probably change as transition proceeds over time.

23. SSR planners must determine what sequence should be utilized in establishing judicial processes.

--Whether the greatest effort should be on criminal processes is a question that should be addressed in the assessment process.

--Where the role of former fighters is significant, a DDR process may offer an alternative to criminal prosecution and punishment.

### **Objectives and Stakeholders**

24. While overarching SSR objectives should always guide SSR planning and implementation, a critical transitional element in stability operations is to demonstrate steady improvement to the host nation: trends are especially important in the security sector.

` --Without abandoning aspirational goals, it is important to establish realistic and “doable” interim objectives that generate positive trends.

--Managing expectations is also important so that feasible achievements are understood as positive accomplishments, and not regarded as inadequate efforts.

25. An ongoing objective assessment process is needed to help maintain positive direction of the SSR effort.

### **Panel One: The Police and Law Enforcement Components of SSR**

The first panel was moderated by Colonel Rick Megahan, Chief of the Governance Division at the U.S. Army Peacekeeping and Stability Operations Institute (PKSOI). The panel focused on the police component of SSR, identifying methodologies and strategies for police capacity building, and exploring the linkages between law enforcement and the other elements of SSR. Mr. Eric Beinhart, from the U.S. Department of Justice International Criminal Investigative Assistance Program (ICITAP), and Colonel Megahan provided short presentations to begin the panel discussion.

#### **Presentations**

Mr. Beinhart provided a case study of police capacity building in northern Uganda. Mr. Beinhart suggested that capacity building in law enforcement should not be separated from capacity building in the prosecutorial and judicial components of the criminal justice system. He argued for a comprehensive approach to policing and law enforcement that was nested squarely in the host nation rule of law framework and focused at the local level, where justice services are often the most problematic. The ICITAP program in northern Uganda simultaneously built capacity within the Ugandan Police Force in Lira Town, and strengthened the integration of the criminal justice system by improving the coordination between police, prosecutors, and magistrates.

Colonel Megahan assessed the police and law enforcement elements of SSR in Diyala Province, Iraq during 2007 and 2008, during which time he served as the senior U.S. Combat Advisor in the Province. The police element of SSR was badly under-resourced in Diyala Province. SSR activities in Diyala Province provided funds and advisors to Iraqi military forces while neglecting the civil law enforcement sector. Colonel Megahan argued that balance must be maintained between the defense and justice sectors. He also suggested that the primary focus of SSR must be on transition and transformation, embracing both host nation ownership and genuine reform. His experience in Diyala Province indicated that the most effective means of pursuing transition and transformation among host nation police forces is through a robust advisory effort focused on the law enforcement community. Colonel Megahan argued that military personnel can effectively perform this mission, provided that they receive adequate and appropriate training, and are deployed in sufficient strength in support of host nation police.

#### **Panel Discussion**

The panel discussion quickly revealed a difference between re-establishing a secure, non-violent environment and the need to restore a functioning criminal justice system. The security mission was generally viewed as including a substantial military function, especially in a non-permissive or semi-permissive environment, while criminal justice is a law enforcement function. The two functions require different approaches and mindsets, and the intersection between the two is not well-understood. Police are necessary in both, but in the former the police function may include a para-military aspect as well as law enforcement. This issue of how to make the police effective in a non-permissive environment becomes especially problematic when police forces are being deliberately targeted by armed groups. Police may be reorganized and re-equipped to cope with military threats, but doing so may affect their ability to function in a civil policing role.

Police capacity building is very resource-intensive. It is expensive in fiscal terms: some estimates suggest a cost of \$1.2 billion annually per 100,000 police. Police capacity building also requires large numbers of highly skilled professionals with civil law enforcement backgrounds. For example, technical aspects (forensics) of policing are not difficult to train, but they require policing specialists with the appropriate skill sets. In failed or failing states, law enforcement organizations may have to be recruited and trained literally from scratch, requiring police capacity building on a scale that is very difficult to generate.

The discussion of resourcing problems identified a need within the U.S. interagency to establish clearer and more robust authorities and funding lines for police and law enforcement capacity building. There is a particular need for more flexibility in funding allocation and program implementation. The UK SSR funding mechanism was cited as an example of how the U.S. might address this problem.

The Uganda case study prompted a discussion of the relationship between police capacity building and SSR in the rest of the criminal justice system. Numerous cases were cited of building policing capacity while neglecting courts, prosecutors, prisons, and the rule of law framework. A strong consensus emerged that this approach has been unsuccessful at best and has contributed to ongoing violence and human rights abuses at worst. Where suspects were routinely released as a result of dysfunctional judicial processes, frustrated police officers have often resorted to extra-judicial killings. Corrupt criminal justice systems have also contributed to the criminalization of the police forces that support those systems.

Building trust among the civilian community is central to police capacity building. Where the people do not trust the police or the government, SSR programs must help to restore this trust. The issue of trust led to the question of who hires and fires police (not necessarily the same agency or authority); who directs policing activities; and from whence police authority derives (the rule of law framework). Trust and legitimacy (and to a degree, functionality as well) will be influenced by the relationship between the police forces and local power structures, but also by whether police forces are controlled (and accountable) locally or centrally. Several participants questioned whether Western models of policing are appropriate or functional in tribal societies, and whether other, alternative models are available that better meet host nation needs.

Capacity building at the ministerial (national) level was recognized as essential to the success of police and law enforcement capacity building. Absent effective management and oversight from the national level, police “train and equip” programs are likely to encounter significant problems. Numerous cases were cited in which lack of effective oversight by the responsible ministries undermined both the legitimacy and the functionality of police forces in the field. Poor management and lack of administrative capacity within national ministries has also led to serious irregularities in payment of police salaries, encouraging and facilitating corruption within the law enforcement sector.

A major thread in the discussion explored the partnership between the host nation and external actors in policing and police capacity building. External actors that are required to provide, facilitate or support police services must establish their legitimacy in doing so. The U.S. and its partners also need to better understand how externally provided police services, or external police advisors and trainers, influence the legitimacy of the host nation government. Cases were cited in which external partners actually took charge of host nation law enforcement and police organizations, prompting a vigorous debate about whether this approach undermined the transition from external to host nation authority.

**Achieving Immediate Developmental Change in Host Nation Police**  
By Colonel Richard Megahan, PKSOI

Training indigenous security forces is also one of the most complex tasks in developing effective counterinsurgency strategy...It is often even more difficult to take indigenous police and military forces with a tradition of incompetence and corruption and transform them into effective forces that can find and defeat insurgents without undermining the legitimacy of the government in the eyes of the population.

James S. Corum<sup>1</sup>

Security is the one “non-negotiable” aspect of stability operations. It is impossible to achieve any enduring stability of beleaguered host nation institutions without first establishing a secure environment. Simply stated, from security everything else follows, for without it there would be no lasting achievements in governance.

Security is the paramount factor that directly affects conditions of stability of host nation institutions in crisis. It is a secure situation that enables the commencement of activities that lead to eventual recovery, growth, and development in economics and infrastructure, humanitarian and social well-being, governance and participation, and justice and reconciliation.

Police serve as the cornerstone of host nation security sector forces in counterinsurgency and stability operations. The police act as both facilitator and guarantor of progression to more stable circumstances. Police capability generation enables immediate security development, and police capacity enhancement reflects their larger organizational and transformational role in long-term protection of the precious gains achieved in stabilizing governmental institutions.

This paper addresses the imperative nature of capability and capacity-building of indigenous police forces *during* stability operations. In particular, it is crucial that leaders of police forces are professionally developed through empowerment and enabling activities. Advisors should be assigned to work with police leaders at every level. Legitimacy of police forces and leaders is promoted initially through joint U.S. and Host Nation presence patrols. U.S. Army maneuver formations are suitable for the early stages of police leader and police force development where presence patrols and infrastructure security tasks are essential.

An “Operations First” policy is essential: police forces must initially conduct operations before detaching elements for collective training in order to establish presence and respectability. Police forces must perform overt, high-profile community services on behalf of the citizenry. Development of police forces cannot be conducted unilaterally or in a vacuum, and there must be direct interaction with the other sectors of stability operations.

Local “neighborhood watch” or other informal irregular security forces must be incorporated into the overall security apparatus and must receive advisor teams. Police forces and military forces must collaborate and conduct joint operations as soon as practicable. Provincial reconstruction efforts, U.S. military force operations, and police and army advisor programs must all be integrated into a coherent, integrated provincial security reform approach.

This paper provides an on-the-ground perspective and observations of police force development in Diyala Province, Iraq, from 2007-2008. The paper also offers a framework for facilitating capacity and capability improvements, and describes the resources necessary to build a coherent, functional constabulary, based on community policing, during the execution of stability operations.

### **Diyala Case Study: Background**

The situation in Diyala Province in May, 2007 was extraordinarily volatile, complex, fragile, and dangerous. Al Qaeda insurgents and Shia extremists had succeeded in imposing greater influence over the population throughout the region, and the provincial capital had already been proclaimed as the “Islamic Caliphate of Iraq.” Provincial institutions had collapsed. Insurgent elements were on the verge of achieving “shadow government” status due to their fundamentalist manipulation of the citizens of the province.

The primary Iraqi Army unit in Diyala Province was organizationally incapable of conducting counter-insurgency operations. The Iraqi 5<sup>th</sup> Division was in complete disarray following the removal of its commanding general, who had finally been relieved by the Minister of Defense for using his formations for sectarian death squads and Mafia-style criminal enterprises. 5<sup>th</sup> Division units were essentially combat-ineffective, having been reduced to performing checkpoint operations on 236 static locations across the territory.

The provincial capital of Baqubah was in a near state of siege. The provincial government was dysfunctional and ineffective, literally bunkered into their reinforced compound in the center of the capital city. Essential services were suspended, food ration deliveries were eleven months in arrears, and trash and sewage flowed in the streets. Few businesses dared to operate. The provincial police were nearly non-existent outside of their headquarters in the center of Baqubah, with only sporadic emergency services and no productive law enforcement activities being performed.

It was under these circumstances that Multi-National Division-North (25<sup>th</sup> Infantry Division) planned to conduct an extensive operation (OPERATION ARROWHEAD RIPPER, June to September 2007) to “liberate” Baqubah from the grip of the insurgents and reinvigorate programs to strengthen provincial institutions and re-energize governance across the contested region. The 5<sup>th</sup> Iraqi Division received a new commander and a new set of U.S. advisors. A second U.S. Brigade Combat Team arrived in the province, the Diyala Operations Command was established at the Provincial Government Center, and steps were underway to reinforce the U.S. Provincial Reconstruction Team to assist Diyala Governor Ra’ad in Baqubah.

While activities took place to address issues in the army and governmental spheres, the Provincial Police, on the other hand, did not receive the same level of advisor support as did the 5<sup>th</sup> Iraqi Division. The



Provincial Director of Police was provided occasional advisory interaction from the Brigade Combat Team Provost Marshal. His staff and subordinate commanders in outlying districts received well-intentioned but sporadic assistance from a dreadfully over-stretched Military Police Company, whose mission included two other provinces.

Provincial police units were under-manned, under-armed, and inadequately led. Police corruption was rampant, and sectarian leanings destroyed most of the remaining legitimacy. “Neighborhood Watch/Concerned Local Citizen” elements emerged throughout Baqubah to fulfill the most basic security tasks in the absence of *bona fide* police units. 5<sup>th</sup> Iraqi Division soldiers were hastily ordered by provincial authorities to perform infrastructure and law enforcement tasks in addition to combat operations and humanitarian efforts. Meanwhile, during the intensive combat in Baqubah, police units were deliberately targeted by insurgents who employed assassinations, bombings, and intimidation tactics to destroy police capability and capacity to intervene in the simplest of law enforcement tasks within the provincial capital.

Provincial police competency and legitimacy remained an issue as operations against insurgents were conducted throughout Diyala Province in the latter quarter of 2007 and the first quarter of 2008. The Provincial Director of Police continuously derailed efforts to execute joint police and army operations, was an open antagonist of provincial leadership of the Diyala Operations Command in planning security activities, and failed to produce police recruits in the numbers he received as authorizations.<sup>2</sup>

Outside of the provincial capital, there were constant issues with rosters, pay, uniforms, vehicles, and weapons. Areas where 5<sup>th</sup> Iraqi Army Division engaged in substantial combat with insurgents coincided with those locations the Police Director had failed to establish functioning police districts (Khalis, Kan Bani Saad, Kanaan, Muqdadiyah, among others). Police units were generally incapable of establishing checkpoints or securing villages or areas previously cleared by Iraqi Army units, especially in locations where strong Shia extremist remnants remained.

Police units sparred with Concerned Local Citizen/Sons of Iraq patrols, and there was open hostility exhibited between the Police Director and the leader of the Sons of Iraq. This animosity resulted in kidnappings, murders, robberies, eviction of pro-Sons of Iraq townsfolk. Intense firefights occurred between Sons of Iraq and police in central Baqubah.

Policemen twice attempted to steal the provincial government payroll as it was transported to Baqubah from Baghdad before the 5<sup>th</sup> Iraqi Division was tasked to escort the money. The Diyala Province granary, mill, and petroleum storage site all had to be secured by Iraqi Army forces because police were incapable of keeping insurgents out of these facilities, or from detaining, stealing, or ambushing grain or oil tankers making deliveries.

Thus, provincial governance was under assault from all quarters and on the verge of imminent collapse. The inability of the police to secure the neighborhoods, streets, and businesses contributed immeasurably to the overall deflation of local and provincial government services available to the people. With no effective constabulary in operation, the first line of security was absent at a critical time in the campaign against Al Qaeda insurgents. The Provincial Governor and the Diyala Operations Commander appeared powerless to reverse the continuing downward spiral of the police.

While U.S. forces were achieving success in counterinsurgency operations against hardcore Al Qaeda fighters, and the performance of the 5<sup>th</sup> Iraqi Army Division was improving daily, the U.S. approach toward enhancing the activities of the provincial police seemed short-sighted and erratic. U.S. senior leaders took no immediate steps to correct deficiencies within the provincial police by “partnering” U.S. combat units with Iraqi Police, or by reinforcing the meager police advisor effort.

### **Observations**

The following observations were collected during twelve months of close, personal interaction with Iraqi army, police, citizens, provincial government, Sons of Iraq, and U.S. Brigade Combat Teams. While all situations are unique, and each cluster of circumstances diverse and complicated, these observations suggest a constructive theme for achieving immediate developmental change in host nation police during stability operations.

Within the context and special situation confronting the contentious security situation in Diyala Province in the spring of 2007, there are four fundamental points that stand out as imperatives for achieving immediate developmental change in host nation security forces: establish the constabulary; focus on community policing; empower and enable police leaders to conduct operations to establish legitimacy; and establish advisors for police force leaders. The observations expressed in this section of the chapter address how well these fundamentals were integrated and synchronized within the overall execution of stability operations.

#### **Failure to first establish the constabulary**

In spite of our emerging U.S. Army Counterinsurgency Doctrine, efforts in Diyala Province were focused on major, unilateral U.S. army combat operations against Al Qaeda insurgents instead of being oriented on developing police unit efficiency, manning, leadership, and reliability.<sup>3</sup> While U.S. advisors were provided at all echelons to the 5<sup>th</sup> Iraqi Army Division in Diyala Province, a similar provision did not exist with the police.

Consequently, just when it became apparent through other host nation sources that there were internal police leadership and organizational problems, U.S. leaders were unable to achieve full awareness of these police leadership and organizational issues, could not corroborate reports of police activities or claims of operations undertaken, and were unprepared to perform an in-depth assessment of the loyalty and reliability of the provincial police. Without a full-time advisor organization working with the provincial police, the U.S. leaders lacked insight and context on the situation concerning the provincial police.<sup>4</sup>

Incidents of district police sectarianism, criminal activities, political assassinations, or of “turning a blind eye” to the operations of extremists or insurgents, went largely unexplained due to the lack of advisors. In fact, already under-manned and over-stretched 5<sup>th</sup> Iraqi Army Division advisors at the battalion and brigade-levels were directed to assist in some form of oversight of the police within their respective areas of operation. Unfortunately, U.S. leaders failed to see that their overall success was inextricably connected to the success of the indigenous forces, especially the police, and that having dedicated advisors assigned to the police was a contributor to unity of effort in COIN.<sup>5</sup>

The speed in which police reconstitution and reform occurs is an essential factor in achieving stability.<sup>6</sup> However, successful reestablishment of police functions requires attention focused on “police first” rather than “army first.” The compendium of counterinsurgency case studies suggests very strongly that it is police operations, not military ones, which most effectively deny the insurgent all tactical advantages and legitimacy. Further, it is clear that host nation employment of its own police to perform search and cordon roles, roadblocks, area control tasks, and search and sweep missions is central to successful counterinsurgency.<sup>7</sup>

Along with the known difficulties of combating insurgents, organized crime and corruption also lurk just beneath the surface of day-to-day civil activities, but a comprehensive approach to stability and law enforcement begins with local policing. Issues of rule of law notwithstanding, U.S. leaders recognized the police as an essential arm of counterinsurgency operations, but were not disposed to extend manpower resources in the direction of local police institutional development. The value of population control and local intelligence gathering was also lost in the press to conduct near-unilateral U.S. combat operations against the Al Qaeda operatives. Faced with the dilemma of prioritizing U.S. combat operations or village, district, or provincial police improvements, commanders chose to emphasize resourcing “traditional” U.S. combat operations.

Local policing provides a combat-multiplier in counterinsurgency operations. But this affect must be developed, integrated, and synthesized with other stability operations sectors, such as governance, humanitarian and social well-being, justice and reconciliation, and economics and infrastructure development, as well as all other U.S. and indigenous activities and elements of security operations. In every aspect of this development, host nation institutions must be empowered and enabled to transition to full operational capability, assuming responsibility for their own sovereign affairs. This empowerment and enabling comes in the form of the following factors: acknowledge the importance of community policing; gain and maintain police legitimacy; balance provincial advisor focus, but first assign police advisors; assign advisors to local militias, since those advisors are integral to the local security apparatus when police are inadequate; clearly define partnering or partnership relationships; and recognize “empowerment” of host nation institutional leaders (good/bad/ugly) as an imperative of transition and transformation.

### **Importance of community policing**

Police forces are arguably the most critical security elements required for stability operations. In every task from traffic control to law enforcement to infrastructure guards to raids on insurgent safe havens, it is the local police who generate the psychological sensation of security and stability in the daily lives of the citizens. Police units are generally recruited from the local populace, which provides the added advantage of in-depth knowledge of the area and the ability to gather information, but it is really the notion of the community policing its own environment that has the greatest weight.

Community policing has an informal, or irregular, constituent, and this was particularly true in Diyala Province. First labeled “Sons of Liberty,” then “Concerned Local Nationals,” and finally “Sons of Iraq,” the militia “units” that sprung from the wards of Baqubah were invariably former Sunni fighters who not only satisfied the need for local policing, but envisioned a political platform in the process. In his paper comparing the development of indigenous police forces during the British counterinsurgency experiences

in Cyprus and Malaysia, James Corum reminds U.S. that community policing begins when a population is threatened by “instability and disorder,” and inevitably turns to a “home guard” to secure its neighborhoods and market places when police institutions are incapable of performing the job.<sup>8</sup>

Corum concludes that local militia emergence occurs from the “natural desire for local security,” and that it is politically unwise for a national government, and especially the provincial government, to disregard these “concerned local citizens.” It is essential, though, that the provincial government determine how it will control and manage the process of integrating the home guard into the mainstream security posture, not allow them to become rogue elements with a contrary political agenda, nor to see them employed as ersatz army forces by foreign army commanders.

While this is a topic that deserves treatment in a separate paper, suffice it to say that the temptation to “assume” the militias as a military resource was nearly irresistible, and that U.S. commanders in Baqubah saw a handy solution to insufficient “allied” military force structure, inadequate provincial government security design, and incompetent community police efforts. Unfortunately, this development overshadowed the fundamental problem of poor Iraqi police leadership, recruiting, organization, and employment in Diyala Province, as well as distorting the U.S. awareness of police capabilities and capacity in the counterinsurgency campaign.

Police forces are a clear threat to insurgents or guerrillas for the simple reason that the police have such close association with the average citizens. If the police elements are effective, they will have a highly visible presence in the neighborhoods, villages, and provinces, and it is this close connection to the people that enables the police to identify problems as they begin to unfold. One of the observations in Baqubah, and throughout the province of Diyala, was the degree to which police failed to identify problems, and seemed to play into the hands of the insurgency through continued mismanagement, inaction, sectarianism, and separation from the people they were entrusted to protect.

Police did not routinely patrol, had terrified the citizens in earlier times, and their lack of concerted work with other host nation institutions fueled the speculation that the provincial leadership was operating along a different approach to reconstitution and stabilization. When Joint Security Stations (JSS) were established in Baqubah, the police were ill-prepared to participate. Provincial Police headquarters was secured by approximately one entire battalion-size police element, while JSS in western Baqubah could not field a full-time squad of police. Even worse, the available police lacked arms, ammunition, even food and water. Consequently, the responsibility of securing the local areas fell not to the constabulary but to the already over-tasked Iraqi Army.

The degree to which insurgents are anxious to terrorize the police and cause them to become ineffective in their security and intelligence tasks can be seen in the following excerpt from Robert Taber’s *War of the Flea*. In this instance, the Cypriot rebel leader articulates a strategy that not only impacts upon the police, but it extends to other governmental institutions as well:

The aim of our next offensive will be to terrorize the police and to paralyze the administration, both in the towns and in the countryside. If this aim is achieved, the results will be threefold:

Disillusionment will spread through the Police Force so rapidly that most of them, if they do not actually help U.S., will turn a blind eye to our activities.

Active intervention of the Army in security, which will stretch the troops and tire them out [SIC]. The falling morale of the Army will also influence its leaders.

In the face of our strength and persistence and the trouble they cause, it is very probable that the United Nations, through member countries who take an interest in Cyprus affairs, will see to bring about a solution.<sup>9</sup>

Police forces at the local and provincial level are critical to defeating insurgents and establishing security as well as to advancing conditions of stability that facilitate the regeneration of failed host nation institutions. There is no question why police patrols and headquarters are routinely attacked in Iraq or Afghanistan.

### **Gain and maintain legitimacy**

Host nation police behavior towards the citizens they are chartered to protect is the prime indicator of the degree to which these very same citizens view the police as a valid government institution. In many societies, police are corrupt and use their power to enhance meager salaries or achieve Mafia-style manipulation of businesses, instead of actually looking out for the interests of the common people. In Diyala Province, reports from within the provincial government indicated widespread police corruption.

Legitimacy is not achieved overnight. Legitimacy occurs through the function of forthright leadership and transparent performance at every echelon of police command. Legitimacy comes from action, from performance, from production. The fact that Provincial Police did not patrol at night directly detracted from any sense of legitimacy as public servants and protectors they were trying to assume. This failure to patrol and occupy checkpoints after dark only made them more mysterious, and reinforced the belief that the police and their leaders were uncommitted to securing the province.

In Diyala Province, local police initially overcame some issues in legitimacy only after highly visible operations were conducted with the Iraqi Army. It was the army, not the police, which had achieved a reputation of looking out for the people, due to the active leadership, productivity of the command, conduct of the troops, and humanitarian assistance extended by the 5<sup>th</sup> Iraqi Division Commander. On top of this, the creation of Sons of Iraq entities, their close association with the 5<sup>th</sup> Iraqi Division, and their strong, professional performance as local security units, did much to continue to undermine any achievable legitimacy of the seemingly disassociated police organizations.

The people were reluctant to entrust their neighborhood security to police, they were uncertain of police behavior at checkpoints, and were not reassured when police convoys on city streets passed at high rates of speed, with truck loads of variously armed, ill-disciplined policemen trailing along like so many Keystone Kops as they moved their police commanders from place to place. Countless personal interactions with citizens of Baqubah and across the province were replete with demonstrations of great disdain for the behavior of the police and the complete lack of trust afforded that instrument of the government.

Unfortunately, the lack of police legitimacy affected army missions, causing more army troops to perform essential infrastructure guard missions, provincial government leader security details, and law enforcement tasks. This caused a corollary affect of taking more and more soldiers away from the manpower-intensive counterinsurgency fight in Baqubah and across Diyala Province, at precisely the moment when the MND-N leadership was asking for additional Iraqi Army forces. And an inability to resource advisors for the police detracted from the potential to develop police leadership and units, or provide insight and evidence of their illegitimate activities.

## **Focus on advising police leadership**

Many of the issues that occurred in Diyala Province were directly attributed to the inconsistent and isolationist leadership of the Provincial Director of Police. During the most volatile, uncertain conditions in the provincial capital at the height of combat operations, the Provincial Director of Police often chose to disrupt, obstruct, or antagonize his superiors and contemporaries. He was not a genuine “team player,” even though that is what his government needed him to be at that particular point in the campaign.

Contrary to his oratory in public pronouncements, police functions were in disarray. Police operations were non-existent outside the provincial police headquarters, recruiting was erratic, sectarianism was evident, and the army was performing most of the police tasks.<sup>10</sup>

Much of the misinformation and misapplication of resources occurred due to the lack of a full-time advisor for the Provincial Director of Police. Where an advisor would have been able to assist and suggest courses of action, be on-hand to witness events, observe planning, and point out discrepancies in reporting and coordination, the absence of an equivalent advisor team for the provincial police, along the lines of the 5<sup>th</sup> Iraqi Division MiTT, was a great opportunity forfeited. The following points are necessary for effective advising of police: person-to-person advising of provincial leaders; priority advising of police commander; avoiding assumption that HN police must be solely advised by U.S. Military Police; observing and assisting police command and control systems; supporting baseline law enforcement operations such as patrols, “Beat Cop” approaches, and checkpoints; monitoring and assisting in pay, equipment, training systems; recognizing and reporting the presence of overt and covert Sectarianism; and avoiding abuse of special response force units for army-specific tasks.

Success ultimately depends on *action*, but it is the host nation government’s ability to recruit, train, organize, and employ its indigenous police elements that ultimately qualifies that success. Success is facilitated by person-to-person advising of provincial police leaders, a requirement that cannot be over-emphasized, since it is the development of police leaders that is vital. Police leadership improvement must occur before institutional growth and development toward full capability and capacity can ever take place.

Person-to-person advising is leader development in action, across the breadth of the province, enhancing legitimacy through presence patrols, integrated operations with the army, overt support to civil authority and demonstrated care for citizens. The “operations-first” methodology insures action at a time when action—even in the instances of poorly-coordinated, disjointed, or unsuccessful operations—facilitates the establishment of legitimacy in the eyes of the population.

## **Is It Possible to Achieve Immediate Development of Police Capacity and Capability?**

It is possible to achieve immediate development of host nation police if the assistance effort focuses on transforming the police as an institution. The ultimate objective of transformation is transition: transition from security force assistance to full operational capacity and capability of host nation police. This can only begin, however, with concerted understanding that transition is the mission.

The mission is not about U.S. unilateral military operations, or U.S.-directed Provincial Reconstruction Team activities, or stove-piped improvements in each of the stability operations lines of effort. Instead, the mission entails empowerment and enabling as the prevailing, and most enduring, philosophy. This approach involves key transformative steps focused on achieving reliability, capacity, and capability

through empowerment and through the enabling actions of advisors. Transformative actions can be seen as a four point approach.

Position police advisor teams throughout the police chain of command. It is essential to resource advisors for the provincial director of police and staff, including district and local levels. Insure “24/7” advising across the police chain of command. This does not require the assumed expertise in law enforcement of a Military Police brigade, but is a task completely within the small unit leadership experience of combat arms formations. The initial advisory mission is not focused on developing forensic expertise, but is oriented on improving leadership and presence of police formations. An infantry battalion can “partner” with provincial police and conduct high-quality leadership advising during operations.

It is imperative to achieve a fused approach of advisor operations across all provincial institutions. This entails synchronizing activities of police advisors with respective Iraqi Army advisors and Provincial Reconstruction Teams, urging a required coordination of all elements of provincial government to perform stability operations.

Police conduct “On-the-Job-Training” in the performance of day-to-day security tasks. Police are out on the streets, on patrol, interacting with the populace, not barricaded behind headquarters compounds. Police are routinely accompanied by advisors as a priority advisor task, since conducting operations is the most important vehicle to build capability, reliability, and legitimacy. Individual or collective unit training occurs at a later time by pulling leaders and forces “off-the-line” as is practicable under the circumstances (leader and unit training), then reinserting into them back into the area of responsibility for their “practicum.”

Development of a legitimate functioning police force should be the counterinsurgency and stability operations main effort. Development of the police capability and capacity is the foundational element of successful stability and security operations. Indigenous police are the primary arm for stability operations, with the army functioning in direct support of police operations. Efforts among army and police forces should be inversely proportional, with police as the principal force, the army as the supporting force. Observations in Iraq suggest that U.S. military leaders are uncomfortable with this inverse proportion.

### **Resources for Immediate Change**

Immediate change in police capacity and capability can be achieved if, first of all, the U.S. military attitude about the mission with indigenous security forces is transformed. Transition is not an esoteric goal to be accomplished by serendipity or happenstance, but that appears to be the prevailing opinion in current operations. Transition is the real mission, but in describing potential transition without practical steps of transformation of host nation institutions we only serve to subvert the scale of our own involvement in stability operations.

Commanders appear reluctant to embrace the notion of making police development a priority, unable to rationalize efforts to resource the development of police units at the expense of U.S.-unilateral, army-focused missions. Perhaps this reticence is a product of the deeply-ingrained U.S. Army organizational cultural relating to the Constitutional constraints of *posse comitatus*, possibly amplified by the mistaken perspective that only military police can mentor and coach indigenous police.

In the final and most pragmatic analysis, the issue comes down to resources. A commander of U.S. forces must determine if he will task organize his available combat power to something other than

traditional combat tasks, especially when his success is measured in U.S. success, not host nation transition success.

Yet the question of setting conditions for transition, through transformation, is more about formative philosophy than force structure. Capability-building through advising is compatible with combat operations, and it is a way of having your cake and eating it, too. After all, if there are manpower shortages that impact on the availability of forces to conduct stability operations, getting the indigenous forces to “whitewash their own backyard fence” is a reasonable and desirable solution.

Finally, no discussion of transition and transformation of indigenous police forces could be seen as feasible and acceptable without some thoughts about a planning methodology for police capacity building. Shown below is an outline of how to think about engaging in activities that will facilitate development of police forces (and security forces in general) to a higher plane of capacity and capability.

### **Practical and Philosophical Framework**

**Assess** - Notwithstanding pre-deployment preparation or detailed multi-echelon planning, performing a first-hand assessment of the situation on the ground is critical. The assessment should include personal observation of the deployment/employment of police forces, especially at night. It should address police discipline and leadership at the “squad patrol” level; response of the local citizenry to police presence, presuming there are foot/vehicle patrols and checkpoints; and synchronization of police tasks with military operations and essential services. The degree to which police leadership embraces the nature of stability operations must drive subsequent efforts to improve policing operations.

**Advise** - Person-to-person advising is the most effective approach to enabling professional development and to building the tactical efficiency of police forces. Advising is manpower-intensive, but it facilitates the highest pay-off in effort. Often, the indigenous police leaders are in their positions due to political cronyism, nepotism, or some other form of position-purchasing schemes, and are frequently poorly trained and prepared to lead police and law enforcement operations. Assigning personal advisors to these police leaders is crucial. This is a full-time job, not an occasional “meet-and-greet” scenario. The objective is to change behaviors of police leaders, through *empowerment*, within the cultural and organizational systems that will remain in place long after the redeployment of advisors and other forces.

**Action** - Getting police leaders to decide and lead operations they have planned is the primary task of advisors. Good, bad, or ugly, getting the police to act is vitally important. But it must be the leaders who determine how and where police elements will be employed. It may begin, given a fairly permissive circumstance, with re-deploying static traffic control checkpoints to more congested areas, or in establishing night patrols or guard posts of key infrastructure. Again, the key is to get the leaders to act, and to reinforce the imperative of action on behalf of public safety.

**Assumption** - Ultimately, host nation indigenous police forces must accept responsibility for their own public safety, security, and law enforcement programs. This objective must be foremost in the minds of the advisors and coalition counterparts from the beginning of any involvement. After all, the transition to host nation full operational capability is the end state.

This paper is intended to promote the theory that it is possible to achieve an immediate development of host nation police entities if a significant effort is undertaken as a matter of priority. U.S. Army institutional and organizational culture must be adjusted to reflect a hidden strength of U.S. Army leaders and units throughout its history: successfully advising indigenous forces during counterinsurgency and stability operations.



Commensurate with the acceptance of this view comes the understanding that not every problem requires a force structure solution. Again, we are back to mind-set, to institutional thinking. There is no need for a separate advisor corps and we have seen that dispatching billions of tax-payer dollars does not automatically equate to one effective police unit in Afghanistan. Leaders of police forces are professionally developed through empowerment and enabling activities, with advisors assigned to work with police leaders at every level.

Legitimacy of police forces and leaders is promoted initially through joint U.S. and Host Nation presence patrols. U.S. Army maneuver formations are eminently suitable for the early stages of police leader and police force development where presence patrols and infrastructure security tasks are essential. Hand-in-hand with this point is the “Operations First” policy. Police forces must initially orient on conducting operations to gain invaluable stability operations or counterinsurgency experience, develop some expertise among police leaders during field operations, and most importantly establish their credibility and respectability among the populace before detaching elements for collective training.

Police forces must perform overt, high-profile community services on behalf of the citizenry. Police involvement in humanitarian operations, medical services programs, ration distribution, or disaster relief is not only essential to crafting the reputation of public service, but is a vital ingredient of constructing a safe and stable environment for the people in the midst of crisis. In particular, police leaders must demonstrate that they embrace their charter as public servants, with a duty to all of their fellow countrymen, regardless of religious affiliation. This is a tall order, but fundamental to the long-term growth of police institutions.

Development of police forces cannot be conducted unilaterally or in a vacuum, and there must be direct interaction with the other sectors of stability operations. In particular, the presence and activities of local “neighborhood watch” or other informal irregular security forces must be incorporated into the overall security apparatus. U.S. commanders must be creative in fielding advisor teams to these organizations (U.S. Special Forces units, performing their traditional Foreign Internal Defense role, may be the most appropriate and most effective organizations for this task).

Police forces and military forces must collaborate and conduct joint operations as soon as practicable, since the primary objective is to demonstrate a collaborative, whole-of-government approach to host nation security. Synergy is achieved through simultaneous application of complimentary capabilities: police perform the lion’s share of counterinsurgency tasks, with the army in direct support.

Finally, U.S. provincial reconstruction efforts, U.S. military force operations, and assigned police and army advisor programs must all be integrated into a coherent, integrated provincial security reform approach. Otherwise, these precious and irreplaceable resources will not be productively engaged and numerous opportunities for high pay-off outcomes will be lost. But most imperatively, U.S. involvement must view transition as the ultimate objective, take proactive steps in the introduction of advisor teams to develop capabilities of indigenous security forces, and embrace the approach that U.S. forces will achieve success through the “over-watch” of indigenous police and army forces.

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<sup>1</sup> James S. Corum, “Training Indigenous Forces” in *Counterinsurgency: A Tale of Two Insurgencies*, Strategic Studies Institute, U.S. Army War College, Carlisle, PA (March 2006), v.

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<sup>2</sup> The Provincial Director of Police, MG Ghanem, was a former Iraqi Army flag officer from Diyala Province, with close political connections to the provincial governor and various high-ranking parliamentary officials in Baghdad. Ghanem lobbied for increased authorizations for provincial police, finally being allocated 25,000 *shurta* for the province. However, at any one time, only about 7000 policemen could be viewed at their posts in the villages and districts across the breadth of Diyala.

<sup>3</sup> With all due respect to the U.S. leadership, there was little evidence of trust of Iraqi institutions in Diyala Province at this particular time. But this is not an illogical sentiment. MND-N had spent the better part of 2006 trying to relieve the “Great Mafioso” of 5<sup>th</sup> Iraqi Army Division, MG Shakur; corruption was rampant in government administration; Al Qaeda had succeeded in establishing a virtual stranglehold on the provincial capital; tribal reconciliation was a shambles as both Shia and Sunni major and subordinate tribes were in open conflict with each other; and the entire province stood apart as the lone area not yet under provisional Iraqi control. Nevertheless, the amount of attention paid to really achieving developmental change in provincial policing was mere lip-service, or many more assets would have been applied to the task.

<sup>4</sup> The advisory effort for the Diyala Province police was predicated on the notion that the BCT Provost Marshall could perform the complex task with augmentee “circuit rider” MP Company squads from Taji. It is still entirely unclear why Diyala Provincial Police had no dedicated Police Transition Teams (PiTTs), other than the bulk of the PiTTs operated in Baghdad during this particular operation. Nevertheless, the PMO accepted his Herculean mission and did the best he could under the circumstances, but freely and publicly decried the negligible affect he was able to achieve without the benefit of full-time advisors.

<sup>5</sup> Bruce R. Pirnie and Edward O’Connell, *Counterinsurgency in Iraq (2003-2006)*, Santa Monica, CA: RAND (2008), 96. This volume also describes how early U.S. policy decisions about police forces contributed to gaps in security and stability in 2008. Essentially, failure to effectively partner with police forces, and advise them in operations on the ground, was a fundamental error in approach. In complete fairness to U.S. BCTs operating during this tumultuous episode, U.S. maneuver battalion commanders were valiantly attempting to provide some degree of oversight on police affairs, seeking integrated U.S., Iraqi Army, and Iraqi Police operations. In the end, the requirement of combat operations did not enable them to resource efforts as fully as they would have preferred.

<sup>6</sup> James Dobbins, John G. McGinn, Keith Crane, Seth G. Jones, Rollie Andrew Rathmell, Rachel Swanger, and Angela Timilsina, *America’s Role in Nation-Building: From Germany to Iraq*, Santa Monica, CA: RAND (2003), 199. Interestingly, the assessment of this study called for a veritable corps of international stability police since it was determined that Iraqi police forces needed to be “purged and overhauled” before assuming responsibility for their own security.

<sup>7</sup> James S. Corum, *Training Indigenous Forces in Counterinsurgency: A Tale of Two Insurgencies*, Strategic Studies Institute, U.S. Army War College, Carlisle, PA (March 2006), vi.

<sup>8</sup> Ibid, 48.

<sup>9</sup> Robert Taber, *War of the Flea*, New York: L. Stuart (1965), 123-124

<sup>10</sup> Some senior U.S. leaders saw a different side of the police chief, and were perhaps overly convinced by his dramatic rhetoric and histrionics. Rather than strongly urging the police chief to make joint army-police operations a priority, to increase presence on the streets of the provincial capital and relieve the army of checkpoint duties and bridge guard, in accordance with the instructions from the Diyala Operations Command, U.S. commanders coddled the police chief and were less confrontational with him than they were with either the 5<sup>th</sup> Iraqi Division Commander, the Diyala Operations Commander, or even the Governor of Diyala.

## **Panel Two: The Role of Non-State Security Forces in SSR**

The second panel was moderated by Dr. Sarah Meharg from the Pearson Peacekeeping Center. The panel focused on what role (if any) forces that are not formally affiliated with the state should play in supporting stability and security. Professor Tom Dempsey from PKSOI provided a presentation on the role of hunting society militias in the transition of Sierra Leone from civil war to post-war reconstruction. Mr. Mike Metrisko, a retired U.S. Foreign Service Officer with experience in Southwest Asia, presented a paper on the role of militias in Afghanistan. The two presentations set the stage for the ensuing panel discussion, which examined the relationship of non-state actors—militias, hunting societies, “neighborhood watch” organizations, private security companies—with statutory security actors, and with the state itself.

### **Presentations**

Professor Dempsey reviewed the role of hunting society militias in Sierra Leone during and following the military campaign that restored the democratically elected government of President Tejan Kabbah to power in 1998. Traditional Sierra Leone hunting societies partnered with Economic Community of West African States (ECOWAS) forces in operations against Armed Forces Revolutionary Council (AFRC) and Revolutionary United Front (RUF) rebel forces. Hunting societies like the Kamajors provided local security to their communities and acted as irregular auxiliaries to ECOWAS units during the fighting. The hunting societies furnished local legitimacy to the ECOMOG intervention and extended the reach and effectiveness of conventional ECOMOG forces. At the same time, use of the hunting societies undermined the authority of the newly restored Kabbah government and led to significant abuses of human rights by hunting society members, exacerbating the difficulties of transitioning from ECOWAS control to full host nation sovereignty.

Mr. Metrisko analyzed the role of non-state security actors in Afghanistan following the defeat of the Taliban. He observed that state security forces—whether police or army—are corrupt and ineffective in Afghanistan. Security on the ground is actually provided by non-state security actors, a combination of militias and private sector (commercial) local security companies. These non-state security forces pay much higher salaries than the Afghan state can afford to pay its statutory forces, and are thoroughly integrated with the traditional social and political structures that order Afghan society. In the absence of a functional Afghan government that is able to provide meaningful security at the village level, Afghan communities are likely to continue depending on non-state security actors for protection. Changing this reality on the ground will require a major external effort, significant resources, and an extended period of time.

### **Panel Discussion**

Both the presentations and the panel discussion which followed noted that non-state security actors are a common feature of societies experiencing extended conflict. Local militias, hunting societies, neighborhood watches, and tribal forces appear to be a frequent response when the state is unable to provide effective security to local communities. SSR programs must acknowledge the presence of these non-state actors and determine how best to deal with them.

Non-state security actors are frequently more trusted than the host nation government or its institutions and forces. This is especially true at the local level: local militias are drawn from and closely associated with village, community, or tribal societies. These local non-state actors often become the “protectors of last resort” for communities in which state security forces are not functioning. Intervening forces may achieve a measure of local legitimacy by partnering with local non-state security actors in such situations.

The panel discussion identified important caveats to the idea that non-state actors have local legitimacy. Local non-state security actors are just that: local. While they may enjoy legitimacy within local communities, that legitimacy typically does not extend to the district or provincial levels. Functionality also tends to diminish sharply when local security forces attempt to extend their influence beyond their own villages and communities. Not only are local militias less legitimate and functional at the district and provincial levels, but their activities may undermine state authority at those levels, due to the disconnects between local actors and the district and provincial government bodies that are charged with formal responsibility for public safety.

Where local non-state actors are providing a protective armed presence, they can limit violence within their respective communities. They can do so directly by deterring or sanctioning perpetrators of violence against civilians, and indirectly by providing a functional role for unemployed young men and women whom might otherwise prey on local community members. The advantages of limiting violence in this context must be weighed against a significant risk that non-accountable local forces will foster a culture of impunity at the local level.

Non-state security forces are frequently significant employers within local communities. Where this has been the case, the results have been mixed. Local militias may provide a “youth hiring program” for war-affected youth, or short-term employment for adults where local unemployment rates are high. Providing employment for older youth and adults may act as a hedge against their recruitment into or continued participation in violent armed groups or criminal activities. On the other hand, a “Civilian Conservation Corps” model that hires the same individuals for critical reconstruction tasks may provide more useful employment than local security tasks. The nature of militia activity is important in this context. Where local non-state security actors are involved in illicit activities—protecting poppy fields and shipments in Afghanistan, for example—the benefits of providing employment are likely to be outweighed by the social costs of criminalizing local security providers. This last problem is especially pernicious where illicit profits enable warlords to pay salaries that neither the state nor licit private sector companies can match.

Despite the short-term benefits associated with local militia partners, there are significant longer term costs and risks. Over time, because non-state security actors lack accountability mechanisms and oversight systems, they tend themselves to become major abusers of human rights and predators in their own and other communities. This tendency is exacerbated by lack of training as police first-responders, and the absence of adequate frameworks for the use of force in a community policing role. As violence increases in frequency and becomes more intense, lack of effective control over militia activities incurs proportionally greater costs. Uncontrolled violence, once accepted and, in effect, sanctioned by state authorities or intervening forces, is very difficult to restrain. To the extent that a partnership has developed between local forces and the intervening force, the declining legitimacy and problematic functionality of local militias will accrue to their sponsors as well.

Circumstances may dictate to either external forces or host nation authorities that some partnership with local non-state security actors is desirable or unavoidable. In such cases, SSR designers and implementers must address, as clearly as they can, who will be responsible for managing the partnership. Specific measures must be established to determine how such actors are paid, who (if anyone) will advise and assist them, and how their activities will be integrated into the SSR program as a whole.

Partnership will typically entail a three-way relationship between local non-state security actors, host nation government authorities, and U.S. or other external partners. SSR activities must define this relationship with as much clarity as the situation permits. The relationship is likely to be dynamic, and

SSR planning should recognize the need to support transition from external to host nation sovereignty, and from non-state actor to state security provider. Status of former militia members is a critical element of the transition calculus. How the SSR program facilitates the gradual (or rapid, if the situation warrants) disarmament, demobilization, and reintegration (DDR) of militia members will have important consequences for the SSR program as a whole.

The panel discussion of DDR in the context of non-state security actors led to several important conclusions. DDR is particularly challenging for local forces. Where bearing weapons is a socially accepted feature of adulthood, disarmament will be problematic at best. Disarmament processes may require a nuanced approach that differentiates between personal weapons and heavy or crew-served weapons.

Since local forces are already a part of the local community, demobilization is also likely to present challenges. Former militia members will be reluctant to accept segregation from their communities, and in some cases the communities may reciprocate the feeling. Without an effective demobilization process supported by segregation and encampment of former fighters, however, conflict-era associations, militia chains of command, and the pathologies of violent behavior are likely to endure. Under these circumstances, the risk is high that former fighters will default to armed violence following their release from DDR programs.

Where any of the DDR phases provide significant benefits, of any sort, to ex-fighters, tension can be created with members of civilian communities. The perception that former combatants are receiving benefits that are not broadly available to civilians may generate resentment, if not open hostility, among those civilians. This may be the case even where the combatants receiving the benefits are themselves members of the local community. Since rising hostility between local communities and former combatants generates even greater risk of reigniting conflict, SSR programs must take great care to address the relationship between former members of local non-state security forces and the communities that they return to.

The transition process, of which DDR is a part, frequently witnesses the movement of militia members to private, commercial security companies in significant numbers. Where this occurs, care must be taken to provide effective regulation and oversight of private security companies, whether those companies are indigenous or foreign-owned. The extensive U.S. use of private security companies in Iraq and Afghanistan, without effective oversight, regulation, or management by the state, has created an unfortunate precedent in this regard, and one that has demonstrated with alarming clarity the potential costs of un-regulated privatized non-state security.

The panel discussion of transition identified conflicts of interest between the non-state security actors and their host nation or external partners as a significant risk. Agendas can be expected to diverge sharply when the host nation government or its external partners challenge the independent (“non-state”) role that local security forces have been playing in the security sector. Where that role has been established for some time, and especially where it has involved local force participation in combat, non-state security actors are likely to resist vociferously any diminution in their security roles. SSR programs must identify ways to mitigate this resistance so as not to turn local non-state security actors into “spoilers” during the transition process.

Endorsing a continuing role for non-state actors in the security sector is one option for crafting a transition mechanism. In effect, such an approach transforms local militias into state actors, with a formally sanctioned role in the state security sector. SSR program designers—both external, and host

nation—must carefully examine this option and consider both advantages and disadvantages of endorsing local forces and giving them the imprimatur of state authority.

The role of non-state security actors will differ sharply across different host nations, and may differ across regions, provinces, districts and villages within the same host nation. How SSR programs deal with each case must be tailored to the circumstances and local environment of that case. There is no “one size fits all” approach that will be applicable across the board, and great care should be taken when applying a practice that worked in one venue to another venue that is broadly dissimilar. For example, applying the “Sons of Iraq” model developed for Iraq to the vastly different circumstances and players in Afghanistan may violate the SSR principle of “do no harm.”

Developing effective policies for dealing with non-state security actors within the context of SSR programs is complex, multi-disciplinary, and cuts across agency and functional lines. The U.S. interagency community needs authorities and funding lines that facilitate integrated approaches to this problem. Current funding mechanisms and agency stove-piping impedes rather than facilitates collaborative design and implementation of programs for non-state security actors, whether they address DDR, transition, or capacity building among local militias.

## **The Role of Non-State Security Actors in Security Sector Reform: Hunting Societies in Sierra Leone**

by Thomas Dempsey, PKSOI

Non-state security actors tend to proliferate in weak and failing states, primarily in response to loss of functionality and legitimacy among state security forces. The influence of non-state actors may be a positive or negative one, depending on their character and the environment in which they operate. Efforts to shore up the legitimacy and functionality of the state security sector must assess the role of non-state actors and determine how—or if—they should be integrated in security sector reform (SSR) activities.

The civil war in Sierra Leone witnessed the emergence of several non-state security actors in the form of traditional “hunting societies.” These societies had clear ethno-linguistic and geographic identities. Called *Kamajors* among the Mende-speakers of the South, *Kapras* by the Temne, *Tamaboros* among the Koranko, and *Donsos* among the Kono, the hunting societies came to be referred to collectively as Civil Defense Forces (CDFs) by ECOMOG peacekeepers. Despite their lack of formal state sanction, the CDFs assumed prominent roles as local security providers in and around their rural villages as governance in Sierra Leone moved towards complete collapse during the mid-1990s. The *Kamajors* in particular became unofficial partners in the military intervention launched by the Economic Community of West African States (ECOWAS) to remove the Armed Forces Revolutionary Council (AFRC) junta, which had seized power in Sierra Leone in 1997. ECOMOG, the military arm of ECOWAS, successfully restored the democratically elected government of President Tejan Kabbah in the spring of 1998, assisted by several thousand CDF (primarily *Kamajor*) fighters.<sup>1</sup> Following the restoration of democratic governance, CDF fighters assisted both ECOMOG and the Kabbah Administration in defeating the Revolutionary United Front (RUF) insurgency that had been ongoing in rural Sierra Leone since the early 1990s.

The ECOMOG experience with the CDFs offers some important lessons with respect to non-state security actors. While ECOMOG forces realized some significant benefits from its association with its *Kamajor* and other CDF partners, it also incurred some heavy costs. Those costs became especially evident as ECOMOG sought to affect a transition of authority back to the host nation government of President Kabbah following the restoration of democratic rule in 1998.

The case of Sierra Leone demonstrates that non-state security actors can play a critical role in satisfying local security needs and in facilitating the operations of intervening forces during the early stages of a peace or stability operation. This is especially true when military forces are intervening in failed and collapsed states, or states with significant “ungoverned spaces.” At the same time, employment of non-state security actors as surrogates for state or external forces can create serious problems for any subsequent transition to host nation sovereignty. Partnering with non-state security actors may also have unanticipated consequences for persistent conflict within the host nation, in some cases perpetuating or exacerbating that conflict.

The ethnically based hunting societies in Sierra Leone were part of the traditional system of socialization in rural villages. The hunting societies were closely associated with customary tribal ruling structures. Groups like the *Kamajors* initiated males into the responsibilities of adulthood while preparing them to augment the diet of rural villages by hunting the small game found in forests of Sierra Leone.

*Kamajors* and their non-Mende counterparts began learning hunting skills from a very young age under the tutelage of the villages’ most experienced and successful hunters. A mature member of these hunting societies was a skilled tracker, intimately familiar with the environment around his village, and accomplished with traditional weapons. More senior and experienced hunters might carry the firearms

available to rural hunters (typically single shot rifles and shotguns). In addition to his knowledge of the environment, the *Kamajor*, like his *Tamaboro*, *Kapra*, and *Donso* counterparts, had a detailed grasp of the human terrain in his region. Members of the village-based hunting societies knew who belonged and who didn't, and who was related to whom. They knew who had joined the RUF rebels and generally where the RUF base camps and areas of operation were, at least those in proximity to the CDF members' village.

The hunting societies had a "chain of command" of sorts, based on a combination of seniority, demonstrated proficiency as a hunter, and familial relationships within the village and its resident clans. This pseudo-structure, and the skill sets that it supported and nourished, lent themselves to the transformation of the hunting societies into paramilitary organizations focused more on security than on hunting. This potential was not lost on the Freetown-based elites struggling for power in the post-independence period.

As conflict in Sierra Leone accelerated in the 1990's, ethnically-based political parties began exploiting the hunting societies to mobilize support and enforce their agendas in their areas of influence.<sup>2</sup> This practice reinforced the evolution of the hunting societies into local security providers. As the civil war in Sierra Leone escalated and the state slid rapidly towards complete failure, the CDFs looked less and less like hunters and more and more like local militias focused on community self-defense—leading to the use of "civil defense forces" as a descriptor for the groups.<sup>3</sup>

By early 1998, hunting society militias were providing the only functional security presence across much of rural Sierra Leone. Essential government services had collapsed entirely in most of these areas. After almost a year of military rule, the security forces of the AFRC were little more than predators themselves, while the RUF openly assaulted rural communities in the south and east. The hunting societies emerged as a local response to both the lack of effective security from RUF attacks and to the predatory behavior of the state security services.

The ECOMOG forces that intervened in February of 1998 to remove the junta of Johnny Paul Koroma were drawn from the forces that had restored order to Liberia prior to 1998. These forces were heavily armed, experienced, generally well-led, and superbly supported, thanks largely to the U.S.-led international effort in support of ECOMOG that began in 1996.<sup>4</sup> The predominantly Nigerian and Guinean troops that comprised the ECOWAS intervention force included mechanized infantry battalions, towed and self-propelled artillery, and Nigerian Alpha Jets flown by veteran pilots who had been providing close air support in both Liberia and Sierra Leone for several years. In terms of combat effectiveness, ECOMOG towered head-and-shoulders above any other military organization in the Mano River region.

The "Achilles heel" of the ECOMOG battalions was found in their limited numbers, the nature of their opposition, and their lack of familiarity with the area of operations in Sierra Leone. ECOMOG launched its offensive with only six infantry battalions, most of them Nigerian units from Liberia. These battalions easily defeated the main AFRC forces and their RUF allies, but lacked the necessary forces to garrison the liberated areas. As organized resistance to the ECOMOG advance collapsed, most rebel forces dispersed into the rain forest and degenerated into criminal bands. Villages and towns in the rear of the advancing ECOMOG troops found themselves in desperate need of protection from these marauding former rebel forces. ECOMOG mechanized infantry companies and battalions were ill-prepared to cope with this kind of irregular threat. Lack of familiarity with the difficult terrain exacerbated the situation.

The road networks throughout most of Sierra Leone are primitive at best. Few of the roads are hard surfaced, and navigation is difficult. Much of the terrain is mountainous, with dense forest cover in the



south and east. The rivers that proliferate in Sierra Leone are deep and very fast, traversed by bridges only along the few major roads, and pose major obstacles to military operations. Accurate topographical maps are still unavailable for much of the country. The most common map in use by ECOMOG forces in 1998 was a Shell Oil Company map from the 1960s, showing only major towns and primary roads. The terrain is ideal for irregular forces.

ECOMOG commanders, lacking sufficient strength to occupy vast stretches of the Sierra Leone rain forest, turned to the hunting societies as means of compensating for both lack of forces and for ECOMOG's limited knowledge of the operational area. The hunting societies were already playing an active role in providing security at the local level. The *Kamajors*, in particular, had been actively resisting the depredations of both rebel AFRC units and the RUF prior to the ECOMOG intervention. Their partnership with the West African peacekeepers dispatched to topple the AFRC government seemed to ECOMOG commanders to be a logical and common-sense solution to a difficult problem set.

Collaboration with the hunting society militias that came to be known as the Civil Defense Forces yielded significant benefits for ECOMOG in the early stages of the campaign. ECOMOG battalion and company commanders advancing from the Liberian border integrated *Kamajor* bands directly into their tactical units. *Kamajors* were employed as scouts and as irregular auxiliaries in operations targeting rebel base camps deep in the Sierra Leone rain forests. The CDF irregulars provided information on roads and bridges, identified potential obstacles to movement, and indicated areas where AFRC or RUF resistance could be expected. Local CDF forces supported ECOMOG by identifying rebels and rebel sympathizers in the towns and villages occupied by ECOMOG forces, and by manning checkpoints established in areas behind the advancing ECOMOG troops. As ECOMOG troops advanced deeper into Sierra Leone, some groups of *Kamajors* accompanied the leading units while others remained behind in liberated areas with an unofficial charter from ECOMOG to provide local security for their respective villages and towns.<sup>5</sup>

The pattern of ECOMOG-*Kamajor* collaboration in the south was replicated in other areas as ECOMOG units advanced north and east from the Freetown peninsula. The practice was initiated by junior officers as a makeshift response to their shortage of troops and lack of familiarity with the environment. It became official policy as the ECOMOG Force Commander, and ultimately the reinstated government of Tejan Kabbah, embraced the CDF militias as full partners in the security arena. The policy yielded several tangible benefits to both ECOMOG and the returning government of Tejan Kabbah in the early stages of Sierra Leone's recovery from failed state status.<sup>6</sup>

Collaboration with CDF bands conferred a measure of local legitimacy on the advancing ECOMOG forces. This benefit was most clearly evident in the ECOMOG-*Kamajor* partnership in Mende-dominated southern Sierra Leone. *Kamajors* were an integral part of traditional Mende society. They were recognized as the protector of last resort in villages and communities where the government had long since ceased to provide any effective measure of security or public safety. By openly partnering with *Kamajor* bands, ECOMOG forces were able to portray themselves as intervening on behalf of the Mende communities that those bands derived from and acted on behalf of. In a country in which virtually all state security forces had become symbols of corruption and repression, the legitimacy conferred on ECOMOG units by their *Kamajor* partners was a key factor in their ability to restore state authority on behalf of the Kabbah government.

Use of the hunting societies as irregular auxiliaries extended the reach and effectiveness of badly overstretched ECOMOG units. *Kamajor* scouts provided guides with detailed knowledge of the terrain, enabling more rapid advances by ECOMOG tactical units. *Kamajors* helped to locate bands of rebels and RUF forces that had withdrawn into the rain forest, and facilitated the effective engagement of those bands by ECOMOG troops. Absent the assistance provided by the *Kamajors*, it is highly unlikely that the

ECOMOG infantry battalions could have maintained the momentum of their advance. It is also unlikely that ECOMOG could have reduced the threat of marauding bands sufficiently to permit the effective employment of the hunting societies as garrisons in liberated areas. In concrete terms, use of the hunting societies enabled ECOMOG to accomplish a mission that should have required a minimum of fifteen thousand troops with less than half that number.

The customary practices, structures, and rule sets of the hunting societies provided some level of functionality in providing essential security services to local communities. Hunting society members' roles as communal hunters instilled an analog for a tradition of public service, reinforcing their legitimacy as security providers in their home villages. While hunting skills did not equate to military or even paramilitary training or experience, those skills did have some utility in responding to lower level threats. As previously noted, hunters were skilled in the use of traditional weapons. Older and more experienced members of the societies were proficient in using their limited number of modern hunting rifles and shotguns. Knowledge of the environment helped the hunting societies to monitor conditions in the surrounding areas and provide provided warning of local security threats to their communities.

As ECOMOG forces advanced deeper into Sierra Leone, the hunting societies were able to partially fill the security void in those areas liberated from RUF and rebel forces. *Kamajors* in the south, for example, manned checkpoints, patrolled roads between villages, and provided an armed presence in local communities. That presence acted as a deterrent to marauding bands of former rebels and to surviving RUF forces seeking to re-infiltrate liberated areas. In providing an armed security presence, *Kamajor* bands addressed, albeit in a limited way, the continuing failure of state security forces to provide for public safety, and reduced the need for ECOMOG garrisons in rural areas. The benefits of the partnership between hunting societies and ECOMOG peace enforcers were clearly evident to the tactical commanders directing ECOMOG operations. What was not immediately evident were the negative consequences of that partnership, which would emerge more clearly as ECOMOG sought to consolidate its gains and transfer authority back to the elected government of Tejan Kabbah.

By the time of the ECOMOG intervention in February of 1998, many CDF bands had become the equivalent of local "enforcers" for ethnically-based political parties. Association with political organizations that were notorious for corruption, and which were becoming progressively more violent in their activities and methods, undermined the traditional legitimacy of the hunting societies. Lansana Gberie described this process eloquently in his history of the war in Sierra Leone.<sup>7</sup> As ECOMOG encouraged the hunting societies to function as paramilitary auxiliaries, and assisted in their deployment outside of their traditional areas of operation, this delegitimizing process was accelerated.

Where *Kamajor* and other CDF bands became the only functional security bodies in their villages, they quickly revealed significant limitations as security providers. The abilities and expertise fostered by communal hunting activities did not equate to police first responder skills. Hunting society members lacked any training in law enforcement. Customary hunting practices did not address the application of coercive force among or on behalf of community members. The only context upon which *Kamajors* and other CDF forces could fall back on where use of force was concerned was experience resisting AFRC soldiers and RUF fighters, and participation in the violence-prone world of Sierra Leone political competition. Neither experience provided functional community policing skills.

The use of ethnically-based non-state actors as security providers was also problematic among community members who were not members of the ethnic majority in the community. Non-Mende villagers were understandably skeptical that Mende-speaking *Kamajors* would act to protect their interests, especially where those interests were challenged by their Mende neighbors. Since almost all communities in Sierra Leone included a fairly broad mix of ethnicities, this problem was a significant

one. *Kamajors* routinely intervened in disputes on behalf of their friends and family members. Even where a genuine ethnic bias may not have been present, the appearance of bias was clearly discernable among minority community members.

As ECOMOG forces facilitated the deployment of *Kamajor* and other CDF militias beyond their home villages, the limitations of those militias become more evident. Lacking detailed knowledge of local human terrain, the CDF default was to identify civilians of other ethnic groups as RUF or AFRC sympathizers, if not actual fighters. Viewed as outsiders by local residents, CDF forces accompanying ECOMOG troops into unfamiliar areas were treated with suspicion and frequently with hostility, a sentiment that the CDF returned in kind.

The CDFs were typically not furnished regular salaries by their ECOMOG sponsors or, subsequently, by the restored government of Tejan Kabbah. In lieu of cash compensation, the hunting society members were generally provided with “assistance in kind”—food—on an intermittent and unreliable basis. Lacking adequate compensation, and deployed outside of the village-based traditional structures that normally supported the CDFs, checkpoints became vehicles for self-aggrandizement on the part of *Kamajor* and other CDF personnel. Not surprisingly, the burden of this practice was borne disproportionately by ethnic groups with affiliations other than those of the CDF members. Falling on ground already fertilized by years of ethnically-based violence, the ECOMOG-CDF partnership perpetuated ethnic division within Sierra Leone and fostered a continuation of violence among members of different ethnic groups. The farther from their traditional homes that the CDF members were deployed, the more pronounced this problem became.

Lack of effective oversight and management exacerbated the abusive practices and ethnic tensions that attended the ECOMOG-CDF partnership. The societies themselves lacked any kind of statutory framework for their activities or operations. The hunters were almost all illiterate, having been raised in a traditional rural society where modern educational opportunities were limited to non-existent. Lack of literacy would have limited the utility of any statutory framework, even if one had existed. Authority within the CDF bands was exercised informally based on the age, personal influence, family connections, and the demonstrated proficiency of individual hunting society members. Internal oversight and management mechanisms were also informal, a function of socializing by the “bush schools” in which adolescent boys learned their hunting skills prior to being admitted to the society as an adult member. Organizational structure seldom extended beyond the local level, making identification of a clear “chain of command” almost impossible above the level of village-based bands, and rendering accountability problematic.

In the absence of effective institutional controls, serious abuses by *Kamajor* and other CDF forces became widespread. The vicious nature of the war with the RUF, and the almost pathologically violent behavior of the AFRC “sobels,” had already created an environment where human rights were routinely violated by almost all sides.<sup>8</sup> Casting the *Kamajors* and their sister CDF organizations in the role of security providers empowered groups which had already been brutalized by this environment. Lacking functional systems for establishing or maintaining accountability, and also lacking established standards of behavior for the use of force in either a military or a law enforcement context, it was not surprising that the hunting societies committed serious human rights violations.

Instances of misconduct by ECOMOG’s *Kamajor* and other CDF partners badly undermined the authority and legitimacy of ECOMOG forces. The widespread abuses by the CDFs ultimately endangered the transition to host nation authority that was seen as a key requirement for ECOMOG withdrawal. Almost as damaging as the CDF human rights abuses was the perception that the CDFs were operating beyond

the effective control of either their initial ECOMOG partners or ECOMOG's successors in the government of President Kabbah.

As ECOMOG's CDF partners increased in numbers and extended their presence across Sierra Leone, the lack of any mechanism for exercising direct control of their operations became increasingly evident. ECOMOG forces were able to exercise direct control of Kamajor bands where ECOMOG units were physically present. Unfortunately, ECOMOG continued to lack adequate forces to maintain a presence in all of the areas that they had liberated, a problem that was exacerbated by the need to concentrate ECOMOG forces for a final assault on RUF strongholds in the east. As a result, broad areas of Sierra Leone had no ECOMOG presence at all, leaving *Kamajor* and other CDF bands to provide functional security without any effective control or oversight from ECOMOG officers.

The transfer of authority from ECOMOG to the reconstituted government of President Kabbah in April of 1998 confronted the Kabbah administration with a difficult choice: either endorse the CDFs as security providers, or acknowledge the government's inability to provide this essential public service. The Sierra Leone military had been completely disarmed by ECOMOG forces and was in the process of demobilization. Sierra Leone's police forces, already compromised by factionalization and by endemic corruption, were completely dysfunctional, as were most institutions of local governance outside the national capitol in Freetown. The government had little choice but to continue the partnership with the CDFs established ECOMOG, but with even less capacity than ECOMOG to provide effective control of the *Kamajors* or their *Tamboro*, *Donso*, and *Kapra* counterparts. As it became evident to local communities that the CDFs did not answer to any organs of the central government, the legitimacy and functionality of the Kabbah regime suffered accordingly.

President Kabbah sought to address this problem by appointing one of the most powerful CDF leaders, the Mende Chief Hinga Norman, as his Deputy Minister of Defense (Kabbah served as his own Defense Minister). It quickly became evident that Chief Norman had a different agenda from that of the Kabbah administration. President Kabbah was forced to dismiss Norman, escalating a highly public and politically damaging breach with the hunting societies at a critical moment in the transition from ECOMOG to Sierra Leone host nation authority.<sup>9</sup> Chief Norman would ultimately be arrested and imprisoned by the Sierra Leone Special Court for abuses committed by his *Kamajor* followers. The hunting societies themselves would have to be disarmed by the British-supported United Nations Peacekeeping mission that succeeded ECOMOG in Sierra Leone in 1999. The damage done to the process of state recovery, and to the progress of security sector reform in Sierra Leone, was profound.

Balancing the benefits and the costs of partnering with hunting society militias in Sierra Leone is a complex and difficult undertaking. The value of their support to ECOMOG in the early stages of the intervention is difficult to understate. Without the participation of the CDFs, the task of ejecting the AFRC and their RUF allies from power in Sierra Leone would have been far more difficult and time-consuming. Security conditions in the rural areas might have deteriorated to a much greater extent, with a correspondingly higher human cost.

On the other side of the ledger, the CDF partnership generated its own costs in human suffering and loss of life as the hunting societies re-ignited ethnically-based violence and perpetrated their own abuses in local communities. These direct costs accelerated over time. As predatory and abusive behavior by hunting society members increased, their lack of accountability to either ECOMOG or host nation authorities became progressively more evident, undermining the legitimacy and functionality of the host nation government.

The most important lesson emerging from experience with hunting societies in Sierra Leone may be that collaboration with non-state security actors, while not the preferred solution, may sometimes be the only feasible course available to intervening forces. In these circumstances, collaboration should, to the extent possible, be limited in time and scope. External forces should collaborate with reconstituting host nation authorities to mitigate the loss of legitimacy that seems to be an inherent feature of partnering with non-state security providers in the violent and chaotic world of recovering failed states. Early planning for the incorporation of non-state security actors into disarmament, demobilization and reintegration programs, and the implementation of such plans at the earliest opportunity, may provide a useful damage mitigation strategy where collaboration with such actors is dictated by necessity.

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<sup>1</sup> The following case study is based primarily on interviews by the author in Liberia and Sierra Leone with ECOMOG officers and soldiers, officials of the Sierra Leone Government, former AFRC rebels and RUF fighters, and hunting society members during May and June of 1998, when the author was serving as U.S. Defense Attache to both countries.

<sup>2</sup> Earl Conteh-Morgan and Mac Dixon-Fyle, *Sierra Leone at the End of the Twentieth Century: History, Politics and Society*, New York: Peter Lang Publishing, Inc., 1999, p. 137; Jimmy D. Kandah, "Unmaking the Second Republic: Democracy on Trial," in *Between Democracy and Terror: The Sierra Leone Civil War*, Ibrahim Abdullah, ed., Dakar: Council for the Development of Social Science Research in Africa, 2004, pp. 168-169.

<sup>3</sup> David Keen, *Conflict and Collusion in Sierra Leone*, New York: Palgrave, 2005, pp. 132-133.

<sup>4</sup> Joint Report by U.S. Departments of State and Defense, *Regional Peacekeeping: ECOMOG and the Liberian Peace Process*, Washington, D.C.: U.S. Department of State (Undated), 14.

<sup>5</sup> Interviews with ECOMOG officers and NCOs, June 1998, in Freetown, Bo, Kenema, and Daru Barracks, Sierra Leone.

<sup>6</sup> Interviews with senior ECOMOG commanders, members of the diplomatic community in Freetown, and senior Government of Sierra Leone officials, June 1998, in Freetown, Sierra Leone.

<sup>7</sup> Lansana Gberie, *A Dirty War in West Africa: The RUF and the Destruction of Sierra Leone*, Bloomington: Indiana University Press, 2005, pp. 82-84.

<sup>8</sup> Amnesty International, *Amnesty International Report 1999 - Sierra Leone*, 1 January 1999. Online. UNHCR Refworld, available at: <http://www.unhcr.org/refworld/docid/3ae6aa0938.html> [accessed 17 October 2008]

<sup>9</sup> Interviews with senior ECOMOG officers, Monrovia, Liberia, December, 1998 and January, 1999.

## **Non-State Actors and Security in Afghanistan**

By Michael Metrisko, PKSOI

Let me start by telling you up front that I have no solution to the security situation in Afghanistan, or to the questions of violence, crime, insurrection, or militias vs. army vs. police as institutions. Foreign armies have come and gone across that country since time immemorial, each one trying to make changes there. In today's world, I include NGOs, the UN, the wide spectrum of international organizations and agencies with plans and ideas for police training, rule of law and governance, and even well-intentioned individuals and philanthropists in this army. Ultimately, and here I quote from *Cultures and Organizations: Software of the Mind* by Geert Hofstede, "Nobody can develop a country but its own population. Development is in the minds, not in the goods. Foreign money and foreign expertise are only effective to the extent they can be integrated into local knowledge."<sup>1</sup> I believe that this applies to the question we are addressing today about the role of militias in Afghanistan.

A lot has changed since the Taliban regime was over-thrown. In early February 2002, just a short time after the U.S. Embassy had re-opened in Kabul following a 12 year absence marked by civil war, the rise and fall of the Taliban regime and the American invasion aimed at ousting al Qaeda and the Taliban who supported them, a colleague and I spent a week visiting all the existing police precincts in Kabul. We met with police officers ranging from the Chief of Kabul Province through men at various sub-offices, met with staff at the police academy, sat with police in their offices and precincts, and rode with them through the city, trying to obtain a clear picture for the State Department of the overall status of the police force.

These were early days – the honeymoon period – of our presence in Afghanistan. The city of Kabul had no services to speak of, and a very large portion of it was a flattened ruin because of the Civil War. Offices were stripped of supplies and even furniture, electricity and running water and even window glass were all hit or miss, and the men in charge in many cases were brand new, quickly placed in office after the Taliban regime and its top supporters had fled the city. The new officials owed their allegiance to friends and the warlords who had given them their positions, and the police institution as such was just a shattered remnant left behind by the various political tides which had washed across Afghanistan as coups and assassinations and war had swept away the old Shah, the regime of Daoud Khan, various communist governments, the *mujaheddin* and finally the Taliban. For three decades, the trained police and security personnel took part in these political upheavals, and disappeared into successive prisons, faced firing squads, were buried in anonymous mass graves, or escaped to refugee camps and settled in other countries.

In 2002, the internet was still unknown in Kabul, and the city's antiquated telephone system was unworkable. Much of the police academy was in ruins, and when I asked the Chief of Police about conditions for the police in other parts of Afghanistan, he told me that his office had no contact with other cities because there was no way to communicate with them and hadn't been for many years. "We know there must be police out there," he said, "but we don't really know who they are or what they are doing." If there was a semblance of order and peace in the country, it was the result of sheer exhaustion following almost 30 years of conflict. But this was the peace of the grave yard, and not the institutional stability which development and continuity and training and general acceptance of law and order bring about.

During the Emergency *Loya Jirga* held in the summer of 2002, delegate after delegate from all around Afghanistan stood up to list their region's needs, and almost without exception, they stressed "security" as the first priority. Without security, education, medical care, commerce and general administration would be almost impossible. But by security, these speakers did not mean more men in uniforms.

The coalition and western advisors saw civil security in metric terms, measured in terms of trained units, police posts, weapons, uniforms and police vehicles. They viewed the institutions of security in terms of modern American and European models, ignoring the fact that present-day western institutions grew up over hundreds of years, were based on a different view of what "law and order" meant, and depend on generous government budgets, rapid communication, a general feeling of respect from the populace towards security institutions, universal literacy and a salary schedule that make police and security work an attractive form of employment. Unfortunately, almost none of this applies to the Afghan reality.

For several decades, security in Afghanistan had been upheld by a combination of tradition, community consensus and sometimes draconian measures, much of it applied without recourse to the system of trials, courts, prisons and appeals that the west utilized. In rural areas, village elders and tribal councils upheld the Afghan version of the rule of law, a way of looking at society and its laws, and the individual's position in the social structure, that differed radically from the west. The clergy played an integral role, directly deciding questions and problems at the immediate local level. In cities and urban areas, small neighborhood meetings of a few trusted elders with heavy input from the local clergy would decide cases through discussion. Women almost never appeared in court, and almost no one used lawyers for anything involving a civil or family matter. If a crime—and the Afghan view of what constitutes a crime is very different from the American view—was committed, the local council, whose members often knew both the culprit and the victim, would hear the case and determine penalty and compensation. The thrust of many decisions was to maintain order and stability within the community, to negotiate a settlement that would prevent armed conflict between the culprit's and victims' families. Neither the court system nor the uniformed police were regarded as helpful players in this traditional system. Needless to say, local powerful families enjoyed a fair degree of immunity to such proceedings, unless their opposing party was from a similar family.

When the Taliban were ousted, a large number of warlords and former VIPs who came back from foreign residences took power in Afghanistan. Cabinet positions, governorships and most other positions of authority were divided among men whose claims were based on political support and personal relationships with the new rulers. Far too many of these officials viewed the victory over the Taliban in terms of medieval warfare: To the victors belong the spoils. Throughout the country, officials saw their new positions as license to steal or re-coup old losses, and a succession of corrupt, venal and incompetent officials at all levels of the bureaucracy quickly dissipated the original support for dismantling the Taliban regime. They imported their system of retainers and personal security entourages with them, and Afghan leaders and VIPs were immediately recognizable by the size of their convoys, and by the guard posts in front of their residences. Unfortunately, this system was also quickly adopted by foreign VIPs and businesspeople, even Americans. When American VIPs traveled through the streets of Kabul, the speeding armored cars that ignored all traffic regulations and often caused collisions and injuries to Afghans, the forcing of other vehicles off the road, the sirens, the armed guards running alongside or

screaming at Afghans to get out of the way - all these were reinforcement for the sense of impunity that Afghan VIPs also felt towards regulation and law.

### **How Does All This Relate to Militias?**

There is a very high level of personal violence in Afghanistan. It targets officials as well as private people, and is indiscriminate when their families are present. It is a traditional way of settling personal as well as political disputes. During my 4 years in Afghanistan, I personally knew more than 30 Afghans who died violent deaths. To the best of my knowledge, no one was ever punished for these deaths, including the assassinations of the 3 Cabinet members and the Governor I knew.

In the year 2007, 925 policemen were killed in Afghanistan. According to the Afghan government, so far this year 760 policemen have been killed. The country's population is about one tenth the size of the United States, so imagine the consequences for the November election in America if 7,600 police had been killed here this year. The illegal drug trade, kidnapping for ransom, open robbery and violent crimes are standard fare, and get mixed in with tribal and clan conflict, feuds that go back for generations, the political opposition to the Karzai government, and the spreading insurrection. It seems fairly clear that the present configuration of security forces and the Ministry of Interior is not suited to the Afghan reality. After 7 years of effort, general security today seems worse than it was in early 2002.

Perception and confidence matter. Afghan leaders at all levels—from provincial warlords to well-heeled businessmen and politicians in Kabul—could not and cannot trust their safety and security to a police force or an army which have been shattered and emasculated over the three decades of conflict. They see private guard forces as necessary for their own security, both at home and in their offices. There is little popular trust for the police or the army, and the average Afghan in Kabul will only laugh if you ask him whether he would call the police in an emergency.

Demographics matter. In Afghanistan there are huge numbers of young men, often illiterate and untrained for any other profession, who are willing to join private guard forces, security companies or even militias. This is how they support their families, and in a country at the very bottom of the economic scale, it is often their only possibility of earning money. And joining such a group means that a young man is far less likely to be sent to a distant corner of the country, far away from his family, tribe or clan.

Tradition matters. Serving an individual leader as a member of his guard force or his personal militia is a time-honored profession in Afghanistan, a country that resembles remote parts of medieval Europe with its religious conservatism, armed local leaders, fortified compounds, hereditary estate holdings and a sharecropper system that keeps much of the rural population in perpetual poverty.

Truly national police and a truly national army which serve the impersonal state and the citizens are a western, modern invention. There is little reason for anyone to think that the Afghan state or the President's Palace as such will be loyal in turn to members of its security forces, pay their pensions in old age, or remember their widows and orphans if they are killed. Militias and the extensive network of private security companies and small groups of armed guards, on the other hand, are often constituted



from a particular tribal or ethnic group, where a more personal relationship with colleagues and leaders is the norm.

Economics matter. According to statistics I have, since the year 2003, a total of 162,212 training sessions of various lengths have been given to Afghan police. They cover a wide spectrum, from basic literacy to firearms to leadership topics. A great deal of emphasis is paid by the coalition on such courses, and rightly so, but when a policeman leaves the training and goes back to his job, he is still faced with economic reality – the most basic problem of providing food and shelter for his family. In the Afghanistan of 2008, a police patrolman working for the Ministry of Interior only gets paid \$70 a month, a salary which it is simply not possible to live on, much less provide for a family. Even a 1<sup>st</sup> Lieutenant only gets paid \$200, and a police colonel gets \$400. In short, a normal policeman must rely on gifts—or let's call them bribes—to meet his normal expenses. All the training in the world cannot make a policeman or a soldier or an officer truly effective and professional if his income must be supplemented by gifts and bribes, because small bribes get larger in the higher ranks, and result in a pervasive corruption where security and service can be auctioned to the highest bidder. On the other hand, an Afghan working as a guard for a private security company makes from \$200 to \$700 a month, depending on the nature of his job. And a security guard working for a drug smuggler escorting caravans through Iran to Turkey gets paid \$3,000 per trip. Now I ask you, if you have a wife, children and an extended group of relatives whom you support, where are you most likely to want to work? When one trip convoying drugs will net you three years annual salary for a policeman?

As I look at the security situation in Afghanistan, I find I have more questions than answers. Given political reality, I cannot envision a situation where the international community—and specifically the United States—continues to fund the Afghan budget forever. Developing an economy and a tax base in Afghanistan that would allow for sustainable good salaries to attract more qualified personnel to the central government's security forces will take many years, and frankly, may never be possible.

Changing Afghan attitudes towards its security institutions is feasible, but only after years of education and public relations. Even this, however, requires changes in popular perception that will only occur if these institutions perform well.

Changing the sense of impunity, the code of violence, personal behavior and attitudes toward law in Afghanistan is also years away. In this process, I can see a continuing role for private guard forces, a network of security companies and especially tribal and regional militias. They can be used for home and neighborhood protection, to enforce security in remote rural areas, on highways and in commercial zones, and certainly around businesses, government buildings, schools and international embassies and other organizations.

In due time the police and other government security institutions may make such groups unnecessary, but that time is still far off in the future.

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<sup>1</sup> Gert Jan Hofstede, Contributor Gert Jan Hofstede, *Cultures and Organizations: Software of the Mind*, New York: McGraw-Hill Professional, 2005.

### **Panel Three: Rule of Law and Justice in Security Sector Reform**

The panel on Rule of Law and Justice as a component of SSR was chaired by Mr. James Walsh from the U.S. Department of State Bureau of International Narcotics and Law Enforcement Affairs (INL). Presenters included Mr. Hank Nichols, Professor of Rule of Law at PKSOI, and Colonel (retired) Anthony Lieto, who just returned from Iraq, where he was Deputy Commander of Task Force 1-34 (Detention Operations). The panel explored the intersection between rule of law and the elements of SSR as developed in the just released U.S. Army Field Manual on Stability Operations, FM 3-07.

#### **Presentations**

Professor Nichols offered a set of benchmarks against which to measure rule of law frameworks. He suggested that any rule of law system should include as essential elements an integrated justice system, an independent judiciary, accountability to governing authorities, and equal protection before the law. Host nation traditional cultural frameworks are important, as are customary practices and structures—but statutory law, and the broadly accepted international norms and standards that undergird it, should shape any rule of law approach. Judicial corruption is a particularly critical threat to rule of law in this context, and should be accorded a high priority in justice and SSR programs.

Colonel (ret.) Lieto addressed the relationship between rule of law and SSR in the context of detention operations. Detaining immediate threats to security is a necessity in non-permissive and semi-permissive environments characterized by high levels of violence. Detainee processing, treatment, and ultimate disposition must be in accordance with appropriate rule of law frameworks. Colonel Lieto argued that detention must be focused, in practical terms, on returning detained personnel to their communities as quickly as possible, in circumstances that would support their effective reintegration into those communities. Detainee operations in this context become the equivalent of a disarmament, demobilization and reintegration (DDR) program, with emphasis on the continuing detention of those individuals who continue to pose a threat to themselves and others.

#### **Panel Discussion**

The panel began by revisiting a discussion from the morning session about the intersection of security and criminal justice. Where security threats and violence are pervasive, establishing a safe environment is an essential and a predominately (but not exclusively) military task. Dealing with criminal activities and threats in a justice context is a separate undertaking, and one that requires a functioning, legitimate rule of law framework. Host nation rule of law frameworks are typically either dysfunctional or lacking in legitimacy in the early stages of an intervention. This situation poses significant problems for the disposition of individuals involved in violent acts, whether those acts are committed against the intervening forces, against other armed factions, or against civilian communities.

Detention of “imminent security threats” in accordance with the Hague Convention and international humanitarian law is the vehicle by which military forces deal with perpetrators of violence who are not formal combatants in a state-versus-state conflict. The long-term incarceration of these detainees in a “prisoner of war” camp, however, is neither appropriate to their combatant status nor likely to diminish ongoing violence over time. Detention camps in these cases frequently become centers of recruitment for violent or criminal groups, and constitute a source of continuing hostility towards both intervening external forces and their host nation partners. Alternatively, simply releasing detainees into the civilian community—a standard practice in UN peacekeeping missions—does not protect those communities from renewed violent acts by detained individuals.

Incorporating DDR as a discrete part of detainee operations may provide a bridge between detention of imminent security threats and community-based justice, reconciliation and reconstruction efforts. In this respect, the recent (2006-2007) transformation of detention operations in Iraq may provide an effective paradigm for future operations. The Iraq paradigm is likely to be especially useful in non-permissive environments where justice and rule of law frameworks are problematic. Further study on how to more effectively integrate DDR and justice and rule of law frameworks is essential.

Establishing or determining an appropriate rule of law framework in the initial stages of an intervention is a critical requirement for SSR activities to go forward. That process requires active participation from the host nation, both early in SSR planning, and on a sustained basis throughout SSR implementation. Several practitioners suggested that there are always some local rule of law frameworks, whether statutory, customary, or both. Efforts must be made to discover those frameworks during the initial SSR assessment, and to use them as a basis for SSR planning and implementation. Robust host nation participation can assist in this discovery process.

Re-establishing a rule of law framework and restoring a functioning justice system requires an understanding of how elements of those processes should be sequenced. There was a consensus that, when required, criminal justice should take precedence over civil justice although it was recognized that the two could have overlapping aspects and civilian law deficiencies can lead to criminal acts. Beyond that, issues identified included at what point judicial reform should be initiated, how it should be undertaken, and whether external judges are necessary to initiate reform efforts. A better understanding is also needed of how efforts should be sequenced between and among national, provincial, and local levels.

Sequencing is also a critical element of transition in the rule of law area. The rule of law framework may change over time, especially as transition occurs between external actors and host nation sovereignty. Initial rule of law frameworks may be determined almost entirely by the intervening actors, especially where no recognized host nation government exists. There may be a transitional rule of law framework, supported by shared sovereignty or limited sovereignty concepts. Who establishes these frameworks, how the process of transition between them is affected, and how the intervener-host nation relationship influences that process are important issues that need to be addressed by SSR planners.

One of the most contentious issues that emerged during the panel discussion addressed international norms and standards in establishing rule of law and justice systems. The guidelines laid out by Professor Nichols in his presentation were broadly accepted as an end state that justice and rule of law programs should aspire to. There was much less consensus on whether these benchmarks were achievable, and if so, what time frames are required to accomplish them. This led to a discussion of what benchmarks should be adopted in the early stages of an intervention, when host nation rule of law and justice systems typically lack both functionality and legitimacy. What is “fair enough,” and how does “fair enough” change over time?

The discussion of “fair enough” settled on two general benchmarks for rule of law and justice. Rule of law and justice should be viewed as improving in the eyes of the local population and of the host nation government. That improvement should be moving towards, and consistent with, the international norms and standards that the external actors and the international community have identified for rule of law and justice systems. Meeting these benchmarks will require the development of concepts and processes to establish these norms and standards within the host nation, and to foster the fundamental values that underlie them within the host nation population. The process is a fundamentally transformative one, requiring an ongoing evolution of the host nation rule of law framework and the justice system that supports it, towards the overarching objectives identified in Professor Nichols’ presentation.

**Rule of Law and Detention Operations in Iraq**  
Colonel Anthony Lieto, U.S. Army (retired), PKSOI

As part of a Rule of Law program the ability to deal with Detention Operations is vital to the stabilization of a civil society. As we move into an era of uncertainty and persistent conflict, often the lines separating war and peace, enemy and friend are blurred. Emerging and budding conflicts and instability are combining with rapid cultural, social, and technological changes will further complicate our understanding of a secure environment.

Rule of law is a principle which our forces, institutions, and entities (public and private) should support, and includes respect for the laws of the nations we are deployed in. Support to laws that are accepted by the local population and equally enforced, adjudicated and consistent with international human rights is key to creating a civil society. In this context, a key element that will face the U.S. in gaining legitimacy is how we and our coalition forces deal with detainees in detention operations.

In Iraq, Task Force 134 was responsible for the care and custody of detained persons. The United Nations Security Council resolutions 1483, 1511 and 1546 authorized the Coalition Forces to detain persons if they posed an imminent security threat to Coalition Forces. This included threats to the Iraqi Security Forces, to include the Iraqi Military, Iraqi Police and Iraqi Interior Forces. The key to detention is to ensure that only persons who are “no longer an imminent security threat” are released back into a civil society. Those criminal elements who are detained and who have violated the host nation’s rules and laws and can be prosecuted by their laws should be moved into the Civil Criminal Court system of the host nation so they can be prosecuted under the laws of the nation.

In any combat environment to include counterinsurgency it will become difficult and often impossible to distinguish an insurgent from a civilian. Insurgents dress, speak, and act as local citizens. Treating a civilian like an insurgent is a sure recipe for failure. Individuals may be detained for two reasons: to prevent them from conducting attacks or further attacks; or to gather information to prevent other insurgents/combatants from conducting attacks.

After every operation there will be detained persons who are either detained because they have been caught conducting an illegal activity or an attack, or are considered a security threat that is sufficiently imminent to warrant their detention. The question is what to do with the detainees and how to re-integrate them back into society?

Detainees must receive humane treatment until properly released. They also must be provided the minimum protection of the Geneva Conventions. They may not be transferred to the host nation or any foreign government, if we have substantial grounds to believe the detainees would be in danger in the custody of others. The Geneva Convention articles 3, 4, 5, 11 and 12 outline the requirements to protect the individuals in detention against acts of violence or intimidation or place them in harm’s way. The detaining power has the obligation to protect them from harm or reprisals.

Task Force 134’s overarching strategy was to empower the moderate detainees and provide them with the tools to lead a productive life after their release. This only could be accomplished if the Task Force first identified the radical element and ensured this radical element was no longer a threat to the moderates.

TF-134 could not just consider ‘isolating insurgents’ from the population – they needed to weigh impacts of detention policy on creating insurgent sympathizers, supports and recruits. The objective was to assist the detainees find a purpose and a sense of belonging to Iraq and to their families instead of some radical movement. The morale and motivational studies conducted by Rand Corporation and Intelligence Agencies highlighted that poverty and violence are closely connected and affect detention. Task force 134 had to develop programs centered on providing education and job skills.

Initially Detention Operations in Iraq from 2003 were typically viewed as intake (capture), interrogate, hold and release operations. After Abu Grab, Task Force 134 was established to consolidate and provide oversight and coordination to Coalition Force Detention Operations. As a side note, according to extensive research and studies conducted by the Rand Corporation and by U.S. intelligence agencies on behalf of Task Force 134, the number one recruiting tool used to recruit Foreign Fighters, Al Qaeda members, and suicide bombers was the five minute Abu Grab video and the pictures from the abuse at Abu Grab. These pictures were posted throughout Iraq especially in the volatile Al Anbar Province.

### **Consolidation Phase**

The establishment of Task force 134 enabled the Coalition Force to improve the quality of life of detainees by closing Theater Internment Facilities at Fort Suse in Northern Iraq and at Abu Grab located in the west end of Baghdad. Detainees were moved to a new detention facility at Camp Cropper located at the Baghdad International Airport (BIAP) facility and moved to the expanded facility at camp Bucca vicinity Basra, Iraq. Detention Operations however, were still viewed as a liability to Coalition Forces and in response to Abu Grab, focused mostly on the Care and Custody of those individuals detained by Coalition Forces.

Studies have pointed out five common historical errors nations commit when conducting Detention Operations: detaining innocent individuals; releasing insurgents who pose a threat or a danger to coalition or host nation forces; mistreating detained individuals; failing to anticipate the effects of arrests and internment on the information campaign; and allowing prisons and detention facilities to serve as a training and recruiting ground for insurgents.

Unfortunately, Coalition Forces repeated many of these common errors. The result was an increase in the support for the insurgency, routine violence, extremist recruitment and insurgents training inside the Coalition Theater Internment facilities. Additionally, there was a decrease in trust and confidence in the Coalition Forces’ mission and people. One has to realize that just because you have an insurgent in detention he has not “taken a knee” and does not consider himself out of the fight.

Detention facilities offer insurgents the ability to recruit, to intimidate the weak, and to legitimize their fight against Coalition Forces and against those of the Host Nation, whom they consider as traitors to their cause. Our studies indicated that most of the movements we have come to associate with Al Qaeda have their roots in the prisons of Egypt, where the new Jihadists were recruited and trained. The same held true for Coalition Detention facilities prior to the reforms of 2007: the strong preyed on the weak and could intimidate them while recruiting the next generation of fighters for their cause.

## **A New Approach to Detention**

In April 2007 Task Force 134 was placed under new leadership and set the course for a new way to conduct Detention Operations in Iraq. The Task Force assessed the current situation inside the Theater Internment facilities at Camp Cropper and Camp Bucca, sought to understand the challenges presented by past mistakes and by the upcoming surge of forces in support of the Baghdad Security Plan. Two fights were identified by the Task Force: the “Close Fight” of ensuring the standards of the care and custody were met, and the “Deep Fight” of turning Detention Operations from a strategic risk to a strategic advantage for the Coalition Forces.

**Close Fight:** The care and custody of detainees was, and remains the paramount mission of Task Force 134. It is the number one priority of all U.S. and Coalition Forces in any conflict anywhere where they are or will be engaged or deployed. This mission includes ensuring housing, culturally appropriate meals, medical and dental care, and an established administrative review process to determine eligibility for release. This mission must also include the planning, resourcing and building of additional capacity to safely intern an anticipated larger detainee population as a result of a surge. Additionally, the longer the force remained engaged, the more the numbers of irreconcilable detainees were expected to increase.

**Deep Fight:** The new way of looking at Detention Operations comes from the Deep Fight of turning Detention Operations from a strategic risk to a strategic advantage. After an intense in-depth study of multiple groups to include the Multi-National Corps-Iraq (Combat Force), Multi-National Force-Iraq (higher headquarters), Iraqi government officials, Iraqi professionals, detainees themselves and members of the Detention Force, the Task Force recognized that the center of gravity for the Deep Fight was the “battlefield of the mind”. If detention had previously been a way for extremists to recruit and train the next generation of fighters, why not make it a way to recruit and train moderates? Ultimate success in prosecuting the counterinsurgency could only be achieved by establishing an alliance with moderate Iraqis, and empowering those moderates to marginalize the extremists.

**Action:** After understanding the battlefield and what was needed to achieve success, the Task Force began developing programs to change Detention Operations from a strategic risk to a strategic advantage. The means of doing so was to ally with moderates in detention—inside the Theater Internment Facilities—to empower them to marginalize the extremists.

## **Objectives of the New Detention Programs**

The overarching objective in detention operations is to ensure that appropriate standards of “care and custody” are maintained. This overarching objective can be divided into two subordinate objectives. These two objectives are focused on those detainees deemed to be Imperative Security Risks but who will ultimately be releasable into Iraqi society, and secondly on those who are irreconcilable and not releasable.

The first objective is to determine if a detainee is an Imperative Security Risk. If the detainee is considered an Imperative Security Risk, the objective is to reduce that risk and replace the detainee’s destructive ideology. When the detainee no longer is an Imperative Security Risk, he should be released

back into Iraqi society. Keeping detainees in detention when they no longer pose an Imperative Security Risk damages the detention program and the reputation of Coalition Forces.

The other objective is to identify the irreconcilables and ensure these irreconcilables cannot continue to influence the moderates. You must defeat any insurgency within the Theater Internment Facilities. Extremists must not be allowed to recruit through intimidation, threats, and coercion. They must be quickly identified during the in processing phase of their detention and not be allowed to mingle with moderates. Wrong detention policies can aid in creating insurgent sympathizers, supporters and recruits.

Victory in detention will be achieved when there is an alliance established with the moderates in detention. You must also empower these moderates to effectively marginalize violent extremists. Each detainee is a “chip” which can influence up to 100 other personnel in society. The policy must not include a policy which conducts general mass releases. Mass releases will often include high risk detainees. In other words, under mass releases you send the message that good as well as bad behavior is rewarded. The key to successful detainee operations will be the percentage of recidivists which come back into detention. Recidivists are those that actively participated in attacks or supported attacks against Coalition Forces or ISF subsequent to release. Those detainees who were rounded up due in part to sweep operations and later released are not included as recidivists.

### **Defeating Insurgency within a Theater internment Facility**

History has shown that the Islamic fundamentalist movement has its origins in the prisons of Egypt. Al-Qaeda’s number two was an Egyptian from this movement. Prisons are a place to recruit. Task Force 134 had a saying that the new detainees were viewed as “recruits” by the extremist elements in the Theater Internment Facilities. Task force 134 initiated a three phase process to address the tactical and strategic aspects of this challenge in its battlespace.

Phase I: Apply Counter Insurgency (COIN) principles to the Theater Internment Facility (TIF); separate extremists from the population; protect the remaining population, both inside the TIF and by an individual screening process, outside the TIF.

Phase II: Defeat the insurgency within the TIF; take away the violent extremists’ sanctuary and their support base inside the wire; succeed in the “battlefield of the mind” empowering the moderates rewarding good behavior going after the extremists, isolating and segregating them from the larger moderate population, while identifying those techniques and ideas which are both effective and contagious. Continue to refine your methods as we have noticed the extremists are adaptive and will always seek to counter the moves against them.

Phase III: By engaging with the population of moderate detainees and their families, and with detainees that have previously been released, build “social capital” within these groups; empower and embolden moderate former detainees to reject the conquering goals of political Islam and to marginalize the violent Islamists within their respective communities.

### **Building of a TIFRIC (Theater Internment Facility Reintegration Center)**

Task Force 134 realized that the Theater Internment Facility (TIF) was just a warehouse of detainees and that no process existed for the reintegration of these detainees back into Iraqi society. The Theater Internment Facility Reintegration Center, or “TIFRIC,” concept was built on COIN principles, providing for a de-radicalization program while being compliant with military police Detention Operations standards. The TIFRIC has two distinct parts, the first being detention (the TIF) and the second consisting of the RIC, focusing on reintegration.

Once a detainee enters the TIF process, they receive a number and through a very detailed in processing review are assigned a risk level. This in processing review includes interrogation by trained personnel who are monitored by the Joint Interrogation and Debriefing Center (JIDC); the detainee also goes before a Magistrate Review Cell (MAG Cell). The MAG Cell is a panel comprised of personnel from the Coalition and from the host nation itself. The detainee may seek council and is allowed to speak with the panel about his detention. During the Detainee Disposition Review Board the board will evaluate the detainee’s potential for release from custody and reintegration back into society through a Pledge and/or parole Program. If the detainee has violated the criminal laws of the country, every effort is made to transfer this individual to the Iraqi Central Criminal Court. This supports reducing levels of fear or intimidation among the more moderate detainees in the detention facilities. The objective during the TIF process is to minimize detainee-on-detainee violence. The guard force must be constantly vigilant of this and must implement measures to immediately defuse such incidents before they escalate. If a violent act occurs, the guard force must investigate the matter and identify the perpetrators, sending their cases to the Iraqi central criminal court to dispense justice.

To prevent detainees from gravitating towards the insurgency, the detainee moves to the RIC process where the re-integration phase now becomes the focus. The moderate detainee must be prepared for release and provided the tools and skills that he or she needs to successfully re-enter Iraqi society. For example, a recent study conducted by Rand concluded that usually uneducated people join militias for money, if there were jobs, fewer people would join and this would also deter future fighters from turning towards militias and extremist movements. The TIFRIC had to provide an economic and social foundation for this process. Task Force 134 offered a variety of programs to include education, vocational training, civics courses, Islamic discussion (hiring moderate Sunni and Shia clerics to teach the Koran), family visitation (families were given a stipend for their expenses based on UNHCR costs), and pay for work programs. These programs were designed to emphasized moderate behavior and discourage extremist behavior.

Among the most important skills a detainee learned through these programs was the ability to read and write. Additionally, the detention program required faculties and programs for women, juveniles and the mentally challenged. Programs focused on these particularly “at risk” groups were incorporated in the TIFRIC.

Transparency was an important element of TIFRIC operations. There will always be those that criticize the detention program and will find supporters in the press. Therefore detention operations must be transparent: international organizations such as UNHCR were be allowed to come into the TIFs and provide a report on the conditions that they observed. The message must be that the care and custody



piece of detention is without flaw and detainees are required or at least given an opportunity to improve their lives.

### **Irreconcilables**

Any detention program must address detainees who are considered irreconcilable, extremists or criminal. Again all effort should be made to move these individuals into the country's Central Criminal Court. If that effort fails then an agreement should be made as Coalition Forces draw down and are withdrawn that the care and custody is turned over to some international organization or to the host country. If the host country has made threats against these extremists then under Article 3, 5 and 12 of the Geneva Convention we cannot turn these individuals over and put them into danger or the threat of death. At the end of a conflict this question will remain and must be addressed.

The process of addressing irreconcilables encompasses four steps: 1) collate existing threat lists; 2) screen the threat lists based on FBI or other agency factors to ensure we are not releasing detainees wanted by these agencies for criminal acts; 3) screen detainees; 4) present a proposed list for final decision. There will always be detainees or prisoners who should not be released back into host nation society. The objective is to correctly identify, segregate and then detain in a facility that will house them and not let them interfere with moderates, continue to perpetrate violence, or recruit others to do so.

### **Conclusion: the "End State" for Detention Operations**

The end state for Task Force 134 was transitioning the detention programs to the Iraqi authorities. The expectation was and continues to be for the Iraqis, working with the Task Force as partners, to assume more responsibility for the programs over time. Every program which Task Force currently runs has Iraqis in the lead or near the lead. The objective is to design a program that the host nation can continue to run long after the Coalition Forces have stood down.

The End State for the Iraqis is a Detention system that follows the Rule of Law, is transparent, upholds the Articles of the Geneva Convention and is acknowledged by the Iraqis themselves as being fair and just.

#### **Panel Four: Expanding the 3D Partnership: Multiple Stakeholders and Issues of Prioritization**

Panel Four explored the need to better integrate additional stakeholders in SSR activities. The panel also examined how SSR activities should be sequenced and prioritized by collaborating agencies. Susan Merrill from PKSOI moderated the panel, which included presentations by Mr. Rick Barton from the Center for Strategic and International Studies, and by Dr. Carter Malkasian from CNA.

##### **Presentations**

Mr. Barton began by emphasizing the role that rule of law and public safety play in dealing with areas of persistent conflict. Citing several examples, Mr. Barton suggested that the rule of law element of reconstruction and stabilization needs to be incorporated much more robustly in the early stages of an intervention. He then proceeded to an analysis of how issues of prioritization and sequencing can best be addressed in the context of SSR. Mr. Barton presented a model that included five “Principles of Success” for building rule of law: *anticipation*, supported by a nuanced contextual analysis; an *integrated strategy* that encompasses all major stakeholders; *operational flexibility and innovation* in program implementation; concrete *measures of progress* for rule of law and justice; and maintaining *communication* among rule of law stakeholders, the host nation, and the public on behalf of whom the rule of law framework and justice system are intended to function.

Dr. Malkasian addressed the issue of local forces who may be working against the agendas of both external actors and host nation authorities, but who are also providing essential security goods and services to local communities. He suggested that the local advantages offered by partnership with these forces are outweighed by the challenges they create for transition to host nation authority. He observed that local practices and tribal systems are not necessarily more legitimate or functional than statutory forces. Dr. Malkasian cautioned that where partnership with local forces who are potential “spoilers” is contemplated, SSR programs should seek to empower groups rather than individuals. Effort should be made to install accountability mechanisms, and consideration given to embedding advisors. Building national forces at the same time as local security elements is a good hedge against the agendas of local spoilers in this context.

##### **Panel Discussion**

There was a broad consensus that integrated strategies are needed for the effective implementation of SSR in response to crises requiring external intervention. Workshop participants emphasized, however, that collaborative and jointly conducted State-Defense assessments should ideally be conducted before the crisis occurs. Such assessments should provide advance warning to crisis planners and also identify opportunities for SSR activities in a preventive context.

The U.S. budget process for foreign operations needs to be modified to provide integrated budgeting for SSR activities. This process should provide the authorities necessary to support the full range of SSR activities, including both the military and law enforcement elements. The process should circumvent the existing stove-piping of SSR funding and programming, both on the Congressional Committee side and on the executive branch agency side. It should also provide flexibility to SSR planners in allocating and prioritizing funding across all elements of the SSR program.

U.S. SSR stakeholders need to identify those organizations within the United Nations that can provide effective partnership with U.S. SSR efforts. U.S. agencies need to identify in a similar way the regional

and sub-regional organizations that can facilitate and support SSR programs in particular regions of the world. U.S. SSR planners should also recognize the limitations of international organizations like the UN as partners in SSR, and find ways to mitigate or compensate for those limitations.

SSR practitioners haven't made sufficient progress in determining how to implement SSR programs more effectively. SSR planners need to identify best practices in SSR implementation, especially where it involves the judiciary, the police, and non-state security actors. As best practices are identified, they need to be institutionalized by the U.S. Defense, military and interagency stakeholders. The community of practice cannot afford to continue the current ad hoc approaches to SSR.

Policing is an area that requires particular attention. Capacity building efforts in the law enforcement sector are not enjoying the measures of success that are needed to enable the broader SSR agenda. This functional area requires greater focus and attention in the U.S. interagency community, and a greater share of funding as a component of U.S. SSR programs. U.S. agencies have achieved some successes in capacity building and transformation of host nation police forces, especially in the context of counter-drug initiatives in the Andean Ridge area. The U.S. interagency community needs to capture the lessons of these programs and apply them more broadly to U.S. SSR efforts.

The U.S. interagency needs to define what it is trying to accomplish with SSR programs. The "3D Policy Paper" currently under review by the U.S. Departments of State and Defense, and the USAID Administrator, is an important step forward in this respect. The policy paper needs to be signed, and reviewed by the incoming administration as a basis for further development of implementing processes and structures.

The SSR implementation process needs to provide greater resolution for SSR goals and objectives at various stages in external interventions. SSR planners need to determine what is "good enough" in the initial stages of crisis intervention, and how "good enough" changes as authority—and sovereignty—transitions from external intervening forces to the host nation. The goals and objectives identified need to accommodate what is "doable" in non-permissive and semi-permissive environments, without abandoning the aspirational goals that SSR programs are designed to accomplish. In this context, SSR practitioners must manage expectations on the part of both external partners and of the host nation, to focus on ensuring that the host nation security sector is moving forward, and in the right direction. Trends are important, and part of SSR is ensuring that the right trends are reinforced and supported.

Several general guidelines should be embraced by SSR practitioners. SSR should empower groups—legitimate agencies, institutions, and forces—in the security sector, and not individual leaders or officials. SSR implementers, whether external actors or host nation partners, should not be afraid to remove "bad actors." Assessment processes that support the development of SSR programs should strive for objectivity grounded in a thorough understanding of the situation on the ground. Mechanisms must be established to ensure that the assessment process is not "captured" by stakeholders with agendas in conflict with SSR goals and objectives.

## **Setting Rule of Law Priorities in the Early Days of an Intervention**

Frederick D. Barton

Co-Director of the Post Conflict Reconstruction Project  
Center for Strategic and International Studies

### **Overview**

The absence of the rule of law during a period of conflict or as a state unravels presents a huge challenge to the rebuilding of a society. Public confidence cannot be restored unless there is some system of trust, so initial progress is vital.

After a discussion of the need to address rule of law right away, the paper will follow CSIS' five principles of success – and how applying them to this issue can provide opportunities for improved results. The five sections will: frame the task and offer an analysis of the rule of law problem; describe how to create an integrated strategy to take on the near term tasks; show necessary operational flexibility and innovation; offer ways to measure progress; and emphasize the centrality of communications. The paper will conclude with some summary thoughts on how to deliver tangible improvements in environments that seem impossible. The author has been directly involved in most of the examples cited in the paper.

### **Why Rule of Law Matters So Much**

For the past few years, the world has nervously observed the downward spiral of Pakistan. Local citizens worry about the violation of the Constitution and laws by civilian and military leaders, terrorist violence by militant extremists, and the absence of daily justice. American policy makers are concerned about safe havens for attacks on U.S. and NATO troops in Afghanistan and the potential unraveling of an ally. Neighbors and the international community wonder how a total breakdown of a country of 165 million people could be addressed by our current approaches and capabilities.

The shared fear is that the continuing deterioration of Pakistan's rule of law will produce a chaotic conflict-like situation.

In travels through Pakistan and the region over the past few years, it is clear that the public has lost faith in the fairness of the system and in the way that laws are applied. After hundreds of interviews, not a single person said that they would trust the police if they were needed and residential neighborhoods near to military bases and garrisons were highly valued. In the Northwest Frontier Province (NWFP) and Baluchistan, the military and the intelligence services were seen as the causes of many extra-legal operations and now they are being attacked directly. The suspension of dozens of judges and their subsequent replacement and partial reinstatement has left the public wondering if the third branch of government will ever matter. Calls for local justice are blossoming, including for the shariah system.

With all of this decay, it is a wonder that Pakistan still mostly works. Arrivals at airports are orderly, patrols on the new toll highway from Islamabad to Peshawar are comforting, and daily life goes on for average Pakistanis. But the existential fear that Pakistanis feel for their country is manifest. The breakdown of their society is of paramount concern and given their lack of faith in the current political

leadership, the public's best hope seems to lie in the restoration of a system of laws. That is why there was massive support for the judges when former President Musharraf suspended them and why the lawyer's movement was so well received in its early days.

The sequence of the Pakistan case is not unusual: special preferences lead to legal entitlements and to broader lawlessness; intimidation moves to impunity to gross human rights violations and the widespread settling of scores; finally, thugs and their official protectors lose control and conflict emerges. Pakistan is noteworthy because its dangerous decline provides a good case study. The trend-line of further deterioration is frightening—and the crumbled foundation that remains makes the reconstruction that much more difficult.

In all conflict-prone cases, security sector reform, rule of law and more broadly, public safety, keep showing up as defining characteristics. If a place is not safe, nothing positive can happen. A farmer in the Congo cannot make a living if his tomatoes are extorted on the way to the market. Children who are unable to go to school in Iraq because of kidnapping threats are not optimistic about their country's future. Diaspora investors will not look for opportunities in a Pakistan where arbitrary justice might result in an expropriation of a business by the military.

Despite its importance, the rule of law is seldom reinforced in the early days of interventions. It continues to be something that the international community does not do well. It seems to be an across the board weakness: police assistance is miserable; "justice in a box" is absent; and international standards are often enforced when a straight-shooting sheriff and a circuit riding judge would not only suffice but be a huge improvement.

Instead, assistance efforts often rely on local militias and private security, challenging the primacy of a system of laws and the monopoly of the use of force. Sometimes the outsiders will redraft a Constitution, establish new law schools, or train judges, all admirable initiatives, but often out of sequence for the problems that are present.

At the same time, what the people want in conflict-affected places is to: feel safer, see constant improvement, and know that the overall trend line is heading in the right direction. This will take short-term initiatives that understand longer-term implications.

As one reviews the challenges of delivering some priority rule of law initiatives and the many weaknesses in performance it is clear that much can be done to improve the international community's responses.

### **Applying the Five Principles of Success to the Rule of Law**

There has been wide acceptance of the critical elements of a stabilization and reconstruction effort ever since the CSIS/AUSA framework was developed in 2001.<sup>1</sup> Adopted by the U.S. Departments of State and Defense, the model argues for a balanced and integrated approach across four pillars: security and public safety, governance and participation, justice and reconciliation, and economic and social well-being.

Applied practice has shown that the elements matter but mostly as they relate to each other. Only in taking a holistic view are you likely to make progress in individual sectors. This gets tough because there

is a natural instinct to take credit for a new army or for the construction of schools, even when the broader conditions produce a level of chaos that undermines any good news.

Over the past few years, as CSIS worked on Iraq, Sudan, Sri Lanka, Afghanistan and Pakistan, chronic weaknesses began to show up in how the U.S. and the international community applied its models and efforts. It became clear that vital steps were needed in order to succeed.

The result has been the Five Principles of Success: anticipation, understanding of context and analysis; integrated strategies with clear priorities; operational innovation and flexibility; clear measures of progress; and constant communications. This section will apply the Principles to the rule of law question through a series of brief examples and broader points.

### *Anticipation, Context and Analysis*

The human condition argues against great preparation: it is too uncomfortable to think about the worst and seemingly wasteful to prepare for all eventualities. On the other hand, a modicum of anticipation is vastly preferable to outright denial or happy talk.

In the U.S. government it is not unusual to have an Ambassador describe a serious situation but then discourage real help by asserting that he/she is dealing with it. The American way is often to see a problem and want to address it, without a full enough appreciation of the challenges or our shortcomings. These noble qualities seem to get a full workout in conflict ridden cases.

Following the Rwandan genocide in 1994, there was a great deal of concern about Burundi, and whether its Hutu-Tutsi ethnic divide and history of violence would produce the same tragic results as its neighbor. Human rights advocates and well-intentioned officials decided that there was a need for an international initiative to investigate impunity. A United Nations resolution was prepared and the recruiting of jurists began.

There was only one problem: those who were perpetrating the abuses were still in power and there was a great likelihood that witnesses who testified or people who were interviewed would be killed.

Rather than fund the full-scale effort, USAID's Office of Transition Initiatives (OTI) offered to pay for an initial fact-finding trip that would determine the viability of the idea. Within days the three person delegation had returned to Washington with a dominant impression: "We almost got killed."

The goal was desirable but the likelihood of success negligible. A good first step is to improve understanding of the situation and a timely analysis of what is possible on the ground.

A second step is to align what is needed and the resources available rather than building castles in the sky.

In Sierra Leone in 2000, there was a near-total absence of justice. No arrests were being made, young thugs were terrorizing entire areas of the country, and no trials were being held. At a luncheon with a table-full of local human rights activists, the discussion led to the question of how many judges could be trusted in the entire country. After a ten second pause, one of the participants said, "Nine."

While a complete restructuring of the Sierra Leone justice system would be desirable, a more pragmatic and useful step would have been to make it possible for those nine judges to hold trials. That would have taken substantial work, including full security and protection for the judges and their families, but the near term results would have produced something more tangible: a 900% improvement in trials and a sense that progress was underway.

A third step is to be modest and understand your own limitations.

Any visitor to Freetown, Sierra Leone in the late 1990's could see the need for a reassuring street presence and a functioning police force. A wise initial choice was made through the selection of an interim British Inspector General to lead the police.<sup>2</sup> Given clear authority but few resources, he proceeded to assess the opportunity and determined that the caliber of the force did not allow for an expansive view of services. But he made a difference: he began to create an esprit by making the most of what he had, reinforcing the need for public service, establishing traffic cops at intersections and sending others out as early warning patrols with whistles.

A common theme of each of these stories is the need to accept things as they are even as you seek to change them.

### ***Integrated Strategies***

It seems simpler to take care of one's own responsibilities rather than to merge those interests into a greater whole. Franchising of problems or solutions is often the result. In Afghanistan, problems and responsibility for their solutions was initially divided: the Italians will do justice, the Germans the police, the U.S. the military, the Japanese demobilization, etc. There seems to be a surprise when individual states' efforts fail to come together.

In late 2002 and early 2003, CSIS began to develop an "action strategy" for post-war Iraq. The work was based on a couple of assumptions: first, the people who won the arguments inside the White House wanted a war with Iraq; and two, there would be lots of plans from most parts of the USG but no single, integrated blueprint that the President could look at and decide what mattered most.

The authors were most concerned about the absence of a new authority on the streets immediately following the combat stage and the vacuum of law and order it would create. This was based on multiple experiences, including the Montreal police strike<sup>3</sup> and the invasion of Panama.<sup>4</sup> Because the pre-Iraq war alliance with certain countries was frayed,<sup>5</sup> a plan was designed that would identify 16,000 specially trained U.S. forces who would not be involved in the war fighting to be inserted in the major cities to prevent looting and sabotage.

The projected cost for a 12-18 month deployment, which likely would have saved months and years of reconstruction, was about \$5 billion – a deal by today's standards.

What mattered is that the CSIS Iraq strategy highlighted the biggest challenges of the place. Priorities usually differ from place to place but they should be set by a clear definition of the driving problems. While post-combat security was the toughest political development test in Iraq, in Angola during the mid-

1990's the issue was land mines. In Haiti in 1994, it was widespread intimidation and the over-centralization of authority.

The beauty of setting priorities by identifying the biggest problems is that it requires you to think outside of your lane and often in terms of the local people. In fact the lane model, so familiar to many bureaucracies, is especially dangerous in conflict settings because of their inherently chaotic nature. The operative model should be water polo vs. the neatness of a swim meet or even the dynamic of a relay race.

### ***Operational Flexibility and Innovation***

The fragility of conflict settings and the dynamics they unleash require an agility that is not often found in government style programming. With its long lead times, rigid personnel systems and formal contracting methods, it is hard to move centralized bureaucracies through these settings- especially with multiple centers of gravity vs. a unity of leadership. Compounded by the enormity of the task and frequent failures, it is not hard to imagine why working in these cases can be dispiriting.

How best to get around these many hurdles? If the integrated strategy is well grounded in the local realities, the next step is to maintain a flexible, entrepreneurial and innovative approach to the work at hand.

One of the best examples for overseeing work in distressed settings was provided by a former Deputy High Commissioner of UNHCR and later Assistant Administrator at USAID, Douglas Stafford. His admonition was always to think of conflict places in terms of "venture capital", where one success out of many attempts would be a worthy, estimable goal. Stafford also used a series of irreverences to make sure that dedicated workers did not become messianic in their efforts. In describing one of his offices he would say, "you're just a turbo charged Peace Corps" or "that's my body shop for conflicts."

Even with the rule of law, the tablets do not always come from *on high*. Opportunism, innovation, and borrowing distinct ideas from past efforts can often be more rewarding than more familiar approaches.

As the U.S. prepared to invade Haiti in 1994, there was great concern about the Haitian army and what to do with it.<sup>6</sup> With USAID's OTI in the lead, it was decided that a six month retraining program for all rank and file soldiers would be attempted. Within a few weeks of the U.S. and allied invasion, Jacques Lopatka, a dedicated and resolute international civil servant who was working for IOM, proceeded to meet with almost every vocational institution in Haiti. Soldiers were asked their preferences between trade, construction or computer skills and then put on a schooling program that included a stipend from the Haitian government, daily transportation and lunch, and counseling.

Within two years, over 5,000 Haitian soldiers had been given an alternative means of supporting themselves and joining the mainstream economy. Beyond those results was the underpinning of the program design: it took a potentially troublesome group of people out of circulation, gave them some renewed hope, supported their families, and also capitalized the vocational schools with two years of paying students. A side benefit was the space it provided the civilian government to dissolve the meddlesome Haitian Army at the end of 1994.



In Iraq in 2003, a single British military officer took charge of the renewal of Basra's formal justice system. With spending authority in the range of 50,000 pounds, this energetic officer repaired destroyed courtrooms, invited judges to return to work, and reopened the local prison. He remained a catalyst in all of his work, using great personal energy and skill with people to mobilize a range of Iraqis – most of whom had a pent-up desire for change along with a residual fear. Given the license to start the rule of law effort in the days after the war-fighting stopped, a singular figure with substantial liquidity was able to make an immediate difference.

### ***Measures of Progress***

It is critical in conflict places to have a clear sense of direction that is grounded in a current reality. From that baseline, progress needs to be measured by impact and results, not by effort, inputs, or even outputs. When the preferred standards are used, overall improvement is more likely to be considered than the benefits of individual, and often not integrated, initiatives.

The types of questions that need to be at the forefront should include: are people safer? Has freedom of movement, assembly or speech improved? When something goes wrong is there a legal authority to enforce the law? Are people leaving their homes because of fear or violence? Is the international community still running the prisons years after an intervention?

In 2005-2007 CSIS undertook two measures of progress reviews in Afghanistan. Each process was grounded in local voices with over 1,000 structured conversations in more than half the country, hundreds of expert interviews, and a thorough review of press accounts, polls and focus groups, and official reports. Both times the rule of law came in as by far the worst problem in the country.

While shining courthouses had been built in a number of provinces, justice had not improved. There seemed to be few judges that were trusted and the highest courts were known to be dominated by religious ideologues of low energy. Few trials were taking place and the Taliban were being welcomed back into some towns because they were at least pursuing common criminals and dispensing some form of "justice."

At a time that the U.S. and its allies were building up the new Afghan Army, there was a clear vacuum being left with the police. Conversations with police made clear that they were being paid much less than the new army and often not receiving their insufficient paychecks. Yet travels around the country indicated that the street presence in most areas of the country continued to be the police and not the army.

As one looks for early returns in the rule of law, it is useful to think as a news editor might: what are some obvious embarrassments? Are innocents dying in prisons? Why are people on the streets scared? Have high profile figures been assassinated, kidnapped or intimidated? Are former fighters and thugs showing up with militias? Any of these kinds of indicators will not only suggest a way to measure progress but also provide a fair standard.

## *Communication*

The unpredictability and volatility of conflict places requires constant communications in multiple markets. Insecurity requires reassurance and the constant dangers of these situations means that quality information must be provided all of the time.

Since a central challenge in the early days of an intervention is to build trust in the process and players and a sense of confidence about the direction that events are moving, it is critical to provide substantive information and transparent channels for communication.

When U.S. reconstruction started in 2003, Iraqis made clear that their distrust was endemic and that they would “only believe what they saw.” It was suggested to the head of the Coalition Provisional Authority, Jerry Bremer, that hundreds of young Iraqis should be given video cameras to record unfolding events for a developing television market. By broadcasting the full range of events in the country, Iraqis would be able to witness hundreds of small advancements and the destructive forces of looting and sabotage – thus getting a fuller measure of the task at hand.

Following the 1994 genocide, the Rwandan people needed constant reassurance regarding justice being delivered. When the Rwandan war crimes tribunal was started, the initial public face was a retiring judge from Madagascar, Honore Rakotomanana.<sup>7</sup> Under his leadership, the tribunal spent most of its early days establishing itself and its procedures and traveling to international capitols to reinforce donor support. Back in Rwanda, there was growing concern about investigations that were not taking place, evidence that was going missing, and the transfer of the trials to a neighboring country.

This pattern continued and led to a massive loss of public confidence in Rwanda and beyond.

One response was to show substantive progress when it finally appeared. As the trials neared, USAID’s OTI engaged a U.S. based non-governmental organization, Internews, to simulcast the tribunal’s proceedings in Arusha, Tanzania back into Rwanda, where the interest was greatest. By all accounts, the daily radio broadcasts and the videotapes that were later shown in town meetings, helped to restore a sense of progress to a devastated people.

In other cases, the communication can be delivered by exemplary service and visibility in the community. Following the early days of the Haitian invasion in September 1994, a former (and now current) New York city police chief, Ray Kelly, was in charge of 1,000 or so international police who were deployed around different parts of the island nation. While the multinational forces varied in their professionalism, Kelly set a high standard and personally modeled the best practices of policing, including arresting criminals that a crowd had chased into a downtown Port au Prince building or saving a civilian during a firefight in front of the Presidential palace.

Today’s Pakistan cries out for a national campaign of revulsion against terrorist strikes. It is almost impossible to imagine any other way to deal with suicide bombers in a country of 165 million. A series of non-stop television and radio commercials that celebrate the lives of innocent Pakistani victims of terrorist attacks, their faith and families, could galvanize a public rejection of this destabilizing tactic.

Communication can be enriched by today's many technologies, especially cell phones, and the central concept is to provide important and needed information in real time.

## **Conclusion**

Any success in the early days will depend on capturing the imagination of the resident public and building their confidence. After years of shrinking rule of law, it is vital to show that improvements are possible.

Initiatives need to be started on both the macro and micro levels, but producing initial, tangible results is critical. This can be done by showing a clear understanding of the situation, fashioning an integrated strategy, delivering some practical first steps, having an honest way to measure progress, and informing the publics of all involved countries on a constant basis.

It is possible to build a base of support for a new era of rule of law because it is so desired among the population.

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<sup>1</sup> *Post-Conflict Reconstruction Task Framework*, Association of the U.S. Army and Center for Strategic and International Studies, May 2002.

<sup>2</sup> Former British Inspector General in Sierra Leone Keith Biddle. "Two sides of Sierra Leone's police force," by Lansana Fofana, BBC Africa, 9 September 2003.

<sup>3</sup> "Montreal's 'night of terror,'" CBC Digital Archives, 8 October 1969.

<sup>4</sup> "Fighting in Panama: Overview; U.S. Troops Press Their Hunt For Noriega; Looting is Widespread in Panama's Capital," by Andrew Rosenthal, New York Times, 22 December 1989.

<sup>5</sup> Including France and Germany.

<sup>6</sup> The Forces Armées de Haïti (FADH) was of unknown size and ability.

<sup>7</sup> From 1995-97 "Judge Rocky" as he was informally called served as the first Deputy Prosecutor of the International Criminal Tribunal for Rwanda (ICTR) based in Arusha, Tanzania. In 2001 he became the Speaker of the Senate of Madagascar.

## ANNEX A: WORKSHOP AGENDA

1. Workshop Introduction (Mr. Franklin Kramer from CNA, Mr. Robert Murray from CNA, and COL Richard Megahan from PKSOI)
2. First Panel: *The Police and Law Enforcement Components of SSR. How are host nation police capabilities and capacity best developed? Where has police capacity building been successfully undertaken? Can police capacity be developed quickly--if so, under what conditions? If not, what are the implications for resource use and sequencing of SSR activities?* Panel Moderator and Panelist: COL Richard Megahan (PKSOI). Panelist: Mr. Eric Beinhart (Department of Justice)
3. Second Panel: *The Role of Non-Statutory Security Forces in SSR. What role, if any, should non-statutory local security forces (militias, hunting societies, “neighborhood watch” organizations) play in supporting stability and security? What is the relationship between those non-statutory security forces and statutory security sector actors? How should non-statutory forces be integrated into or dealt with by a broader security sector reform program? How does their role change as the society transitions to full host-nation control of the security sector? How should non-state security actors be created or trained?* Panel Moderator: Dr. Sarah Meharg (Pearson Peacekeeping Center, Ottawa, Canada). Panelists: Professor Tom Dempsey (PKSOI); Professor Mike Metrisko (PKSOI)
4. Third Panel: *Rule of Law and Justice in Security Sector Reform. What measures and approaches contribute to the establishment of a functional and legitimate rule of law framework and justice system? What body of law should be used to establish that framework? How and where should judges be procured? What role should traditional or customary justice practices play in SSR, and how can they best be integrated into statutory/formal justice and judicial processes? How can SSR programs deal most effectively with corruption in the judiciary? What should the role of external actors be? How long does it take to develop an adequately working judiciary--and what does that say about the sequencing of SSR activities?* Panel Moderator: James Walsh (State/INL) Panelists: James H. Nichols (PKSOI); COL(ret.) Anthony Lieto (formerly the Deputy Commander, TF 1-34 (Detainee Operations), Iraq).
5. Fourth Panel: *Expanding the 3D Partnership: Multiple Stakeholders and the Issues of Prioritization. Assuming limited resourcing for Reconstruction and Stabilization, how should SSR activities be sequenced and prioritized to make best use of those resources that are available? What is the relationship of SSR to other Whole-of-Government R&S elements? Who are the key stakeholders and what is their role? What is achievable “on the ground,” with limited resources, in a reasonable time frame? How can SSR participants best counter the influence and actions of “spoilers”?* Panel Moderator: Susan Merrill (PKSOI). Panelists: Frederick Barton (CSIS); Dr. Carter Malkasian (CNA)
6. The Way Ahead: Mr. Franklin D. Kramer (Facilitated Discussion)

## ANNEX B: WORKSHOP PARTICIPANTS

Frederick D. Barton, CSIS  
Eric Beinhart, ICITAP, USDOJ  
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Jennifer Hamilton, OSD/SOLIC Stability Operations  
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